ANNUAL REPORT

Environmental Review Tribunal

April 1, 2003 to March 31, 2004

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Table of Contents

Chair's Message 1

The Tribunal's Mandate 2
Core Functions of the Tribunal 3
The Rules of Practice 5
In-House Learning Program 5
Environmental Compensation Corporation 5

Tribunal Activities 6
Total Resolved Cases - 2002-2003 vs. 2003-2004 8
Total Cases in 2003-2004 by Case Type 9
Consolidated Hearings under the *Consolidated Hearings Act* 10
Summaries of Selected Decisions 11
Environmental Protection Act 11
Environmental Bill of Rights, 1993 17
Ontario Water Resources Act 18
Niagara Escarpment Planning and Development Act 19
Consolidated Hearings Act 22
Summary of a Judicial Review Application of a Decision of the Tribunal 25

Report on Performance Measures Fiscal Year 2003-2004 26

Appendix A - Overview of Relevant Legislation 31
Appendix B - Profile of Tribunal Members 43
Appendix C - Learning Program 47
Appendix D - Key Performance Goals and Objectives Fiscal Year 2004-2005 48
Appendix E - Website Statistics - Downloads 53
Appendix F - Financial Report 54
Appendix G - Contact Information 55

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Chair's Message

This Annual Report sets out the activities and progress of the Environmental Review Tribunal for the fiscal year 2003-2004.

The Tribunal's mandate is to conduct appeals and applications under Ontario environmental legislation. Environmental appeals and applications are conducted in a manner that is fair, open, transparent, and consistent with the rules of natural justice. Within our legislative framework, the Tribunal's responsibility is the protection of the people of Ontario and our environment.

The parties in cases before the Tribunal include individual citizens, community and environmental groups, and government ministries and agencies. Appeals range from the very straightforward to the extremely complex. The Tribunal provides a forum where all parties will be heard and their issues adjudicated fairly in the public interest.

I would like to extend my personal thanks to the members and staff who have enabled the Environmental Review Tribunal to fulfill its mandate.

Ian McPhail Q.C.
Chair

June 29, 2004

The Tribunal's Mandate

The Environmental Review Tribunal was established under the *Environmental Review Tribunal Act, 2000.*

The Tribunal functions as a quasi-judicial tribunal, subject to the rules of natural justice, the requirements of its governing legislation and the *Statutory Powers Procedure Act*. The Tribunal adjudicates applications and appeals under the following statutes: the *Environmental Assessment Act*, the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Safe Drinking Water Act*, the *Pesticides Act*, the *Nutrient Management Act, 2002*, the *Consolidated Hearings Act*, the *Environmental Bill of Rights, 1993* and the *Niagara Escarpment Planning and Development Act*. Although the *Nutrient Management Act, 2002* has been proclaimed, the Tribunal has not yet heard any appeals under this Act. For an overview of the legislation, refer to Appendix A.

The Tribunal's mandate is to provide an independent review of decisions of the Directors of the Ministry of the Environment, and a fair public hearing process that assesses the merits of proposed development projects, plans or programs that will have an impact on the environment.

Under the *Niagara Escarpment Planning and Development Act*, the Minister of Natural Resources appoints members of the Tribunal as Hearing Officers to conduct hearings and make recommendations concerning decisions of the Niagara Escarpment Commission ("NEC") regarding development permit applications. The NEC appoints members of the Tribunal as hearing officers to conduct hearings for the purpose of receiving representations respecting proposed amendments to the Niagara Escarpment Plan ("NEP"), when objections have been made to the proposed amendments, or for the purpose of periodic review of the NEP.

The Environmental Review Tribunal has administrative responsibility for the *Consolidated Hearings Act*. This administrative responsibility is conducted under the designation of the Office of Consolidated Hearings. A Joint Board can be established under the authority of the *Consolidated Hearings Act* in order to eliminate a multiplicity of hearings before different tribunals under various acts on matters relating to the same undertaking. The composition of a Joint Board may be drawn from members of the Environmental Review Tribunal and the Ontario Municipal Board. A Joint Board is empowered to hold a hearing to consider all of the matters under all of the acts the undertaking is subject to and for which hearings are required.

The principal task of Tribunal members, who are Lieutenant Governor in Council appointees, is to conduct fair, efficient and impartial hearings. Tribunal members must consider all the evidence presented, and make decisions (or recommendations) with written reasons based on that evidence, in a manner that protects the environment and is consistent with the Tribunal's governing legislation. For a profile of the Tribunal members, refer to Appendix B.

Core Functions of the Tribunal

The Environmental Review Tribunal has four main functions which are:

1. **Outreach**
2. **Mediation**
3. **Staff Processing of Hearings**
4. **Hearings and Decision Making**

1. OUTREACH

Passive Component:
The passive component of the Tribunal's outreach function consists of a number of initiatives. The Tribunal has created guides explaining its role and procedures to be distributed upon request. The Tribunal has a website which provides a wide variety of material updated an ongoing basis. Website users have access to current information regarding the Tribunal and its hearings, including its decisions, orders, forms, relevant statutes, and Rules of Practice.

Active Component:
The active component of the Tribunal's outreach function includes a number of initiatives. These are staff responses to questions from clients, public information and education sessions delivered by senior staff or Tribunal members, and stakeholder consultation. The public information sessions are held by the Tribunal to inform the public of the hearing process prior to complex hearings or hearings with substantial public interest. Upon request, education sessions are held to educate various public groups about the Tribunal's jurisdiction, processes and other matters. The Tribunal seeks feedback regarding new policies, procedures and general operational issues. The public can also provide feedback to the Tribunal by using the form created on the website for that purpose.

2. MEDIATION

The use of mediation in the hearing process encourages parties to narrow or settle their differences. It often removes the need to proceed to a hearing or shortens hearings by reducing the number of issues to be adjudicated.

The Tribunal's senior staff and most of its members have received certified training in mediation. Mediation, generally conducted 30 days before the commencement of a hearing, is offered in appeal hearings before the Tribunal, and before the Niagara Escarpment Hearing Office. In all other cases, the Tribunal will provide mediation upon request.

3. STAFF PROCESSING OF HEARINGS

This function includes all administrative steps necessary to process an appeal/application from the date of first filing to the beginning of the hearing. The Tribunal hears appeals/applications pursuant to nine different statutes. When an appeal/application is received, it is dealt with through one of five different administrative processes. Each process includes:

- screening the appeal/application to assess its compliance with the Act under which it was filed;
- assigning it to the appropriate hearing process;
- scheduling the hearing;
- monitoring and administering the process through to the rendering of the written decision.

4. HEARINGS AND DECISION MAKING

This component is entirely in the hands of the Tribunal members, all of whom are Order-in-Council appointees, and includes hearings held by members and their written decisions.

All recommendations/decisions made on appeals under the *Niagara Escarpment Planning and Development Act* of development permit applications are required by legislation to be made within 30 days of the conclusion of the hearing or within such longer period as the Minister of Natural Resources may allow. Niagara Escarpment Plan amendment application decisions must be rendered no more than 60 days after the conclusion of the hearing or within such extended time as the Niagara Escarpment Commission may specify. Tribunal decisions on the *Environmental Bill of Rights, 1993* leave to appeal applications are to be made within 30 days after the day on which the application is filed, unless the Tribunal determines that, due to unusual circumstances, a longer period is needed. In all other types of decisions, Tribunal members endeavour to render their decision within 30 days of the completion of the hearing or the filing of final written submissions (if ordered by the hearing panel).

The Rules of Practice

The Rules, Practice Directions and Guidelines remain open to review and revision as circumstances and new legislation may dictate in order to reflect the changing needs of the Tribunal and the public. The Rules are available on the Tribunal's website or by paper copy, upon request.

In-House Learning Program

The Tribunal has continued to conduct the Learning Program for its members and staff. The Learning Program provides half-day workshops and seminars on topics of relevance to the Tribunal. This fiscal year, the Tribunal hosted a number of outstanding speakers. The Tribunal extended invitations to other organizations, which included: the Environmental Commissioner's Office, the Ministry of the Environment, the Ministry of Natural Resources and the Niagara Escarpment Commission. For a complete list of the Learning Program's workshops and seminars held in this fiscal year, refer to Appendix C.

Environmental Compensation Corporation

The Environmental Compensation Corporation ("ECC") provided compensation under the authority of the *Environmental Protection Act* to persons who suffered loss or damage as a direct result of an environmental spill. Generally, it was a payer of last resort, as applicants were required to make all reasonable efforts to obtain compensation from the persons responsible for the spill. In June 1997, the *Environmental Approvals Improvement Act, 1997*, was enacted. It provides that no application for the payment of compensation, received after June 3, 1996, for loss or damage directly resulting from a spill shall be processed or paid by the ECC. The final application was resolved in January 2004. The Tribunal's role in monitoring these outstanding applications is complete.

Tribunal Activities

Case Type	No. of Unresolved Cases Carried Forward into 03-04 Fiscal Year	No. of New Cases Received in 03-04 Fiscal Year	No. of Cases Resolved in 03-04 Fiscal Year by Decision of the Tribunal	No. of Cases Resolved in 03-04 Fiscal year by Tribunal Approved Settlements	No. of Cases Closed in 03-04 Fiscal Year by Other Means*	No. of Cases Carried Forward into 04-05 Fiscal Year	No. of Hearing Days held in 03-04 Fiscal Year**	No. of Hearing Days held on Motions in 03-04 Fiscal Year	No. of Tribunal Days held on mediation in 03-04 Fiscal Year	No. of Tribunal Days held on Public Info Sessions and Prehearing Conferences in 03-04 Fiscal Year
ENVIRONMENTAL ASSESSMENT ACT										
Applications by Referral	0	0	0	0	0	0	0	0	0	0
ENVIRONMENTAL PROTECTION ACT										
Applications by Referral	0	0	0	0	0	0	0	0	0	0
Appeals	32	63	5	3	48	39	95	41	19	0
ONTARIO WATER RESOURCES ACT										
Applications by Referral	0	0	0	0	0	0	0	0	0	0
Appeals – water Initiatives	31	3	8	20	6	0	20	0	0	1
Appeals – all others	17	30	16	1	15	15	33	6	0	0
SAFE DRINKING WATER ACT										
Appeals	0	18	0	0	15	3	4	0	0	0

Case Type	No. of Unresolved Cases Carried Forward into 03-04 Fiscal Year	No. of New Cases Received in 03-04 Fiscal Year	No. of Cases Resolved in 03-04 Fiscal Year by Decision of the Tribunal	No. of Cases Resolved in 03-04 Fiscal year by Tribunal Approved Settlements	No. of Cases Closed in 03-04 Fiscal Year by Other Means*	No. of Cases Carried Forward into 04-05 Fiscal Year	No. of Hearing Days held in 03-04 Fiscal Year**	No. of Hearing Days held on Motions in 03-04 Fiscal Year	No. of Tribunal Days held on mediation in 03-04 Fiscal Year	No. of Tribunal Days held on Public Info Sessions and Prehearing Conferences in 03-04 Fiscal Year
PESTICIDES ACT										
Appeals	0	0	0	0	0	0	0	0	0	0
NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT										
Development Permit Appeals	13	84	41	0	40	16	34	5	16	7
Plan Amendment Applications	1	1	0	0	0	2	11	0	0	0
CONSOLIDATED HEARINGS ACT										
Applications	4	4	1	0	0	7	40	0	0	1
ENVIRONMENTAL BILL OF RIGHTS, 1993***										
Leave to Appeal Applications	4	21	14	0	4	7	0	2	0	0
Total	102	224	85	24	128	89	237	54	35	9

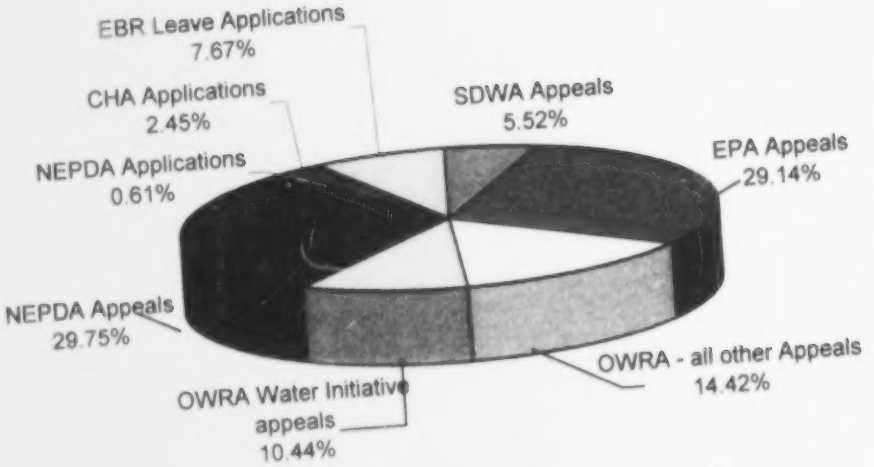
* Resolved by other means include: withdrawal by applicant/appellant; case abandoned; settlement reached after mediation, etc.

** Hearing days held include preliminary hearings and hearings.

*** It is the Tribunal's practice to hold written hearings in these matters.

Total Resolved Cases - 2002-2003 vs. 2003-2004
Cases Carried Forward into the next fiscal year
Cases Closed
New Cases
Cases Carried Over from the previous fiscal year
Stage of Cases
0
50
100
150
200
250
300
Number of Cases
2003-2004
2002-2003

Total Cases in 2003-2004 by Case Type



Note: There were no applications referred under the *Environmental Protection Act*, the *Ontario Water Resources Act* and the *Environmental Assessment Act* and no appeals filed under the *Pesticides Act* or the *Nutrient Management Act*.

Consolidated Hearings under the *Consolidated Hearings Act*

The Environmental Review Tribunal has administrative responsibility for the *Consolidated Hearings Act* ("CHA"). This administrative responsibility is conducted under the designation of the Office of Consolidated Hearing. This fiscal year, there were eight cases, of which half had been carried forward from the previous fiscal year.

The following table outlines the legislation under which the Joint Board [1] was requested to consolidate.

Case Name and Case Number	*Niagara Escarpment Planning and Development Act* (Plan Amendment)	*Niagara Escarpment Planning and Development Act* (Development Permit)	*Planning Act*	*Ontario Planning and Development Act*	*Aggregate Resources Act*
Central Milton Holdings Ltd./665497 Ontario Limited (99-036)	•		•		
Graham Bros. Aggregates Inc. (00-128)	•	•	•		•
Vineland Quarries and Crushed Stone Limited (02-143)	•		•		
Embee Properties Limited et al. (02-244)	•		•	•	
James Overholt (03-065)		•	•		
Dufferin Aggregates, a Division of St. Lawrence Cement Inc. (03-086)	•	•	•		•
1521160 Ontario Ltd. (Matriarch Developments) (03-209)		•	•		
Alexander Sanderson (03-224)		•	•		

[1] For further information, refer to The Tribunal's Mandate on page 2 of this report.

Summaries of Selected Decisions

Environmental Protection Act

Poplar Grove Trailer Park Limited and Ontario Corporation No. 000376244 v. Director, Ministry of the Environment

A boil water advisory was announced on account of E. coli and coliform bacteria found in the water supply at the Poplar Grove Trailer Park. The Ministry of the Environment ("MOE") met with the President of Poplar Grove Trailer Park Limited and Ontario Corporation No. 000376244 ("Appellants") and presented him with the water works Certificate of Approval ("CofA") and a copy of the engineer's design and drawing of the water and sewage works located at the park. The President stated that the CofA had been revised and that the information presented was irrelevant and inaccurate. Although a request was made to the Appellants by the MOE to provide documentation to show that the MOE information was incorrect, the Appellants never provided any such documentation.

A further inspection revealed that the facility was not operating in compliance with the CofA. The Appellants had made modifications to the facility without first obtaining a CofA or an amendment under s. 52 of the *Ontario Water Resources Act*. As a result, a Provincial Officer's order was issued.

The Director confirmed the Provincial Officer's order and the Appellants filed a Notice of Appeal. At the hearing, when the Appellants were asked to clarify their appeal, the Appellants' representative did not refer to any aspect of the Director's order that had been issued. After being instructed on the hearing procedure, he still did not clarify the appeal regarding any aspect of the Director's order. The Notice of Appeal only stated that the Appellants filed the appeal due to the contaminated water being present on someone else's property.

Issue: Can an appeal be dismissed when no valid grounds for the appeal are stated in the Notice of Appeal or at the hearing?

Decision: At the hearing, it became evident that the Appellants had no grounds for appealing the order. The grounds that were presented for appealing the order (that the contaminated water was present on another owner's property) seemed to be frivolous and vexatious. The Appellants did not provide the MOE with information regarding the water works. At no time during the hearing did the Appellants offer any valid evidence or particulars to support the appeal. The Environmental Review Tribunal ("Tribunal") stated that it does not dismiss appeals unless it is satisfied that it has good reason to do so. The Tribunal had previously dismissed appeals where the appellants had not provided the required information to the MOE. The Appellants were under the mistaken belief that they did not have to comply with disclosure of evidence prior to the hearing and that the MOE was responsible for gathering the

information it required. This appeal has no merit or relevance as it does not deal with any aspect of the Director's order. The appeal was not allowed and the Director's order was confirmed.

Released: April 18, 2003 (Case Nos.: 02-180, 02-182)

Durham District School Board v. Director, Ministry of the Environment

On December 4, 2002, a Director under the Ministry of the Environment ("MOE") confirmed a Provincial Officer's order instructing the Durham District School Board ("Board") to prepare and submit a remedial action plan regarding soil, groundwater and vapour phase hydrocarbon contamination at residential and vacant properties in Uxbridge as well as at the Uxbridge Secondary School. The Board appealed the order. Six days before the preliminary hearing the Environmental Review Tribunal ("Tribunal") received a written request from the Board that they are withdrawing their appeal. The request was not received in sufficient time to send out the Notice of Withdrawal to the public. The Tribunal did not accept the withdrawal due to the late filing and the preliminary hearing proceeded as scheduled.

At the preliminary hearing, Counsel for the Board reiterated the Board's request for the appeal to be withdrawn. According to Counsel, the appeal should be withdrawn as the Tribunal no longer had the jurisdiction to continue with this appeal.

Counsel for the MOE stated that while mindful of the public interest in the issues outlined in the order, the Tribunal had no further jurisdiction to hear this appeal because the appeal had been withdrawn, the order had not been weakened.

Counsel for the Township of Uxbridge requested party status, opposed the withdrawal of the appeal, and requested that the Tribunal assume a "supervisory role" to make sure that the order would be carried out.

The Residents affected by the fuel oil contamination to their property requested party status and opposed the withdrawal of the appeal. Citing Rule 55 of the Tribunal's Rules of Practice, Counsel emphasized that the Tribunal can continue with an appeal despite a request for withdrawal if the Tribunal believes it would adversely affect the interests of any party or was contrary to the public interest. The Residents' Counsel opposed the withdrawal of the appeal, as it would prejudice the Residents. The MOE stated that there would be no prejudice since withdrawal of the appeal would not weaken the order. A remedial action plan had already been submitted by the Board and would be reviewed by the MOE and then made available to the Township and Residents.

Issues:

1. Does the Tribunal have jurisdiction to continue with an appeal notwithstanding the withdrawal of the appeal if it has reason to believe that such a withdrawal would adversely affect the interests of any party or was contrary to the public interest?

2. Can the Tribunal, after it has made its ruling in a hearing, continue in a "supervisory role" with respect to the implementation of an order?

Decision: The Tribunal does have jurisdiction to proceed with an appeal under the conditions outlined in Rule 55 of the Tribunal's Rules of Practice despite any requests for withdrawal. With respect to *DBC Environmental Services v. Ontario Ministry of the Environment and Energy*, a case referred to by both Counsel for the Residents and Counsel for MOE, the Member concluded that the Tribunal's jurisdiction began when the appeal was filed and ended with the decision.

The Member allowed the withdrawal of the appeal since she was satisfied with the MOE's claim that the order had not been watered down, and that copies of the remedial action plan would be distributed to the Township and the Residents for their input following the Director's review of the Plan. The Member did not address the issues of whether the Tribunal should act in a "supervisory role" or of the granting of party status.

In a supplementary decision, the Member concluded that the enforcement of an order is not the role of the Tribunal.

Released: Initial decision: May 8, 2003.
Supplementary decision: July 21, 2003 (Case No.: 02-194)

Echo Bay Milling Limited v. Director, Ministry of the Environment

A Provincial Officer's order confirmed by the Director's order was issued against Echo Bay Milling Limited ("Appellant"). Except for one point, an agreement was reached between the Appellant and the Director, Ministry of the Environment ("MOE") regarding all aspects of the Provincial Officer's order. The remaining issue was that portion of the Provincial Officer's order requiring, based on air emissions, a Certificate of Approval ("CofA") for the Appellant's equipment. Specifically the Appellant narrowed its issues as to whether or not a CofA is legally required and the order should have been drafted to allow the Appellant a reasonable period of time to obtain the CofA.

At the commencement of the hearing, Counsel for the MOE brought a motion for an order dismissing the appeal on the basis that there was no evidence that the Director's discretion was improperly exercised and with no relevant grounds of appeal raised, the matter should be dismissed. Counsel for the MOE also stated that there was ample time to obtain a CofA. The

motion also requested an order abridging time for service as Rule 43 of the Environmental Review Tribunal's ("Tribunal") Rules of Practice requires that a Notice of Motion is to be served on all parties at least seven days before the motion is to be heard, unless the Tribunal, in its discretion permits otherwise. Although materials were faxed a day earlier by the Director, the Appellant's Counsel, due to a problem with their fax machine, did not receive the Notice of Motion until the evening before the motion was to be heard. The Appellant's Counsel stated that given these circumstances, he was unable to prepare for argument of this motion before the Tribunal. The Appellant's Counsel also stated that one of the few protections that parties have against arbitrary measures is the Tribunal.

The Tribunal denied the motion for abridgement of time stating that a motion to dismiss an appeal before the hearing of evidence is an extraordinary remedy. The Tribunal also ruled that it would be unfair for the Appellant's Counsel to argue this motion without having the chance to adequately prepare.

At the hearing of evidence, the Provincial Officer submitted that the diesel engines, operating the machinery for the sawmill, discharged contaminants, and required approval. On June 10, 2002, a Director's order upheld all the conditions in the Provincial Officer's order including a requirement that the Appellant not operate any unapproved equipment until a CofA had been obtained. The Director's order was appealed. The Tribunal stayed the Director's order.

Issue: Is the Provincial Officer's order as confirmed by the Director's order tantamount to a stop order pursuant to s.8 of the *Environmental Protection Act*? If so, is this reasonable under the circumstances?

Decision: The Tribunal, when examining s.8 of the *Environmental Protection Act*, concluded that orders that amount to stop orders can only be enacted when the contaminant, or the concentration level of the contaminant, is of such a high amount that the danger to health, life, or property is immediate. The Tribunal concluded that this was not the case with the emissions from the Appellant's engines. The Tribunal further concluded that adopting the strongest possible remedy when other moderate remedies were available was not a reasonable decision on the part of the Director. Adoption of this remedy would have been tantamount to a stop order, as the operation would have been closed down.

The Tribunal also concluded that the Appellant had not moved quickly enough to obtain the needed CofA especially during the period of the Tribunal's stay order. The Tribunal was clear in stating that it was only due to the unreasonable nature of the Provincial Officer's order that the Tribunal was willing to give the Appellant a further opportunity to obtain the CofA. The Tribunal confirmed the Director's order with an effective date of May 31, 2003.

Released: April 9, 2003 (Case No.: 02-061)

Inco Limited and Ellen Smith et al. v. Director, Ministry of the Environment

The appeal by Inco Limited ("Inco") and Ellen Smith, Craig Edwards, Gilles and Angie Desmarais, Paul and Carmel Gingras, and Ron St. Jean ("Residents") challenged an order issued by the Director, Ministry of the Environment ("MOE") regarding the nickel contamination of lands in the Rodney Street area located within the City of Port Colborne. At the hearing, Counsel for Inco advised that the appeal was moot as the order had expired. This statement was challenged by the Director and the Residents based on their argument that the hearing caused the order to be stayed and that the Tribunal's Rules required a written Notice of Motion.

The Residents indicated that their appeal would be based on policy regarding the upper concentration of 7100 p.p.m., on the MOE's cleanup guidelines, the order's limit of 25 properties in the Rodney Street area, and the geographic scope of the MOE's sampling program. Inco also challenged the 8000 p.p.m. intervention level in the order.

Issues:

1. Is the appeal moot while the order has expired?

2. Is a written Notice of Motion required for dismissal?

3. Are the MOE's requirements regarding the issuance of an order reasonable?

Decision: The Members concluded that a written Notice of Motion was required. In an oral ruling the Members decided that, in the absence of a written Notice of Motion for dismissal, and in the public interest, the hearing would proceed. However, a written Notice of Motion for dismissal was subsequently filed and a date was set to hear submissions.

Counsel for the Director qualified an expert to defend the MOE's prerequisites prior to issuing an order.

The parties continued with settlement talks. The settlement talks were progressing to a point that Inco was prepared to withdraw its Notice of Motion for dismissal. Counsel for Inco and Counsel for the Residents advised the Members that they were prepared to withdraw their respective appeals. Counsel for the Director concurred. The Members ordered the Director to re-issue or amend its order with a new expiry date, allowed the withdrawal of the Notice of Motion, and allowed the withdrawal of Inco's and the Residents' appeals.

Released: September 26, 2003 (Case Nos.: 02-017, 02-098)

The Becker Milk Company Limited and Petro-Canada v. Director, Ministry of the Environment

The decision to be made regarding this motion is whether or not costs can be awarded by the Environmental Review Tribunal ("Tribunal") against the Director, Ministry of the Environment ("Director"). The Becker Milk Company Limited and Petro-Canada ("Appellants") in this matter had each brought a motion for costs incurred in this appeal. During the hearing, the Director had revoked the order and the Tribunal issued a Notice of Cancellation of Hearing. The Tribunal quickly rescinded its Notice of Cancellation of Hearing and followed the procedure set by Rule 53 of the Tribunal's Rules of Practice regarding the termination of proceedings. The Tribunal ruled that its issuance of the Notice of Cancellation of Hearing did not make it *functus officio* in this matter and the Tribunal could still rule on the costs motion. What is unusual about this motion for costs is that the statute under which the appeal is brought does not provide the Tribunal with the power to award costs.

Issues:

1. Does the Tribunal have the authority to award costs generally?

2. If the Tribunal does have authority to award costs, should it be exercised in these cases?

Decision: The Tribunal decided that it had the power to award costs in accordance with the provisions of the *Statutory Powers Procedure Act ("SPPA")*. Section 25.1 gave the Tribunal the power to make rules governing its process. Section 17.1 gave the Tribunal the power to award costs if the Tribunal adopted cost rules pursuant to s.25.1. The Tribunal adopted Rules of Practice pursuant to s. 25.1 which included provisions for cost awards. Thus, the Tribunal could award costs although there were no specific cost powers given to the Tribunal by the statute under which these appeals were brought. The standard of behaviour for costs awarded pursuant to the *SPPA* is higher than the civil proceedings standard of some degree of success. For costs to be awarded, there must exist the circumstances set forth in s.17.1 of the *SPPA*, which do not include success. Unreasonable behaviour is listed as a costs reason in the *SPPA*. Costs were awarded in this matter because the Tribunal concluded that the Director's behaviour was unreasonable on three occasions.

First, the Tribunal ordered the Director to present himself for cross-examination on his affidavit. The Director immediately revoked the order, thus preventing such cross-examination. Secondly, the Director failed to obtain the consent of the other parties to the revocation as required by the Tribunal's Rule. Third, the Director attempted to exempt himself from the Tribunal's process by relying on the Notice of Cancellation of Hearing even though the Tribunal had corrected this incorrect notification several hours after the issuance of the Notice.

The Tribunal stated that when dealing with costs it prefers to deal with the cost powers awarded to it by the statute under which the appeal is brought. However, the Tribunal was willing to award costs as allowed by the *SPPA* in this matter due to the unreasonable behaviour of the Director, as heightened by the particular facts of this case. The costs awarded were based on the

bill of costs presented by each party. The totals were $2,479.00 to Petro-Canada and $2,615.40 to The Beckers Milk Company Limited. The Director has appealed the Tribunal's decision to Divisional Court.

Released: Marcl 3, 2004 (Case Nos.: 01-140, 01-143)

Environmental Bill of Rights, 1993

Trent Talbot River Property Owners Association, Marchand Lamarre and Jodi McIntosh v. Director, Ministry of the Environment

This case involved two applications for leave to appeal a Certificate of Approval ("CofA") issued by the Director, Ministry of the Environment ("MOE") to operate a sewage works in connection with a sand and gravel quarry. The Trent Talbot River Property Owners Association applied for leave to appeal stating that the approval for the CofA misdescribed the works requiring approval, that the approval did not result from all information required by the "Guide for Applying for Approval of Industrial Sewage Works" ("Guide "), and the approval is not the result of taking every reasonable step to consider the MOE's Statement of Environmental Values. The approval showed no consideration of the hydrogeology issues associated with the proposed quarry, no consideration of critical water quality issues, and fails to impose effluent limits on metals and arsenic.

Marchand Lamarre and Jodi McIntosh applied for leave to appeal on the grounds that the approval did not result from all information required by the Guide, and the approval was not the result of taking every reasonable step to consider the MOE's Statement of Environmental Values. Also, Marchand Lamarre and Jodi McIntosh submitted that the issuance of the CofA could result in significant harm to the environment, as the quality of the water may be adversely affected by the proposed quarry operation.

Issue: With regard to the leave to appeal test in s. 41 of the *Environmental Bill of Rights, 1993*:

1. Is there good reason to believe that no reasonable person, having regard to the relevant law and to any government policies could have made the decision; and

2. the decision, in respect of which an appeal is sought could result in significant harm to the environment.

Decision: Both applications for leave to appeal the CofA to operate a sewage works were granted. The Member held the opinion that no reasonable person could have granted the CofA for sewage works when no valid Permit to Take Water ("PTTW") was in place. With no valid PTTW in place, it is not possible to know the volume of water involved. Without knowing the volume of water involved, no reasonable person would have issued the CofA for the sewage works. Also, without knowing the volume of water involved, the issuance of the CofA for the

sewage works could result in significant harm to the environment. The MOE has applied for Judicial Review before the Divisional Court.

Released: January 29, 2004 (Case Nos.: 03-156, 03-157)

Ontario Water Resources Act

Ghislain Chartrand, Les Materiaux de Terrassement Modugno Inc., Reynald Charlebois and Sylvie Chalifoux, Emanual Arcand Terre Noir Enr., Brisebois et al., Arcand et al., and Ronald Brisebois v. Director, Ministry of the Environment

These cases involve the appeal of 7 of 21 Provincial Officer's orders confirmed by a Director's order and issued against individuals and companies that operate near the Alfred Bog. The orders required a detailed site plan and survey, an application for a Certificate of Approval ("CofA") for an industrial sewage works, and an application for a Permit to Take Water ("PTTW") for existing and proposed water-taking operations.

Issues:

1. Are the public concerns about detrimental effects on the Alfred Bog by peat harvesting activities warranted?

2. Will dewatering activities by peat harvesters:

   (a) destroy the make-up (flora and fauna) of the Bog?

   (b) irremediably alter natural surface water bodies and thereby,

   (c) lower the local water table and affect nearby drinking water wells?

3. Should the peat harvesters be required to apply for a PTTW and a CofA?

Decision: The Member concluded that the Director, Ministry of the Environment ("Director") should not have issued the 21 orders when by the Director's own admission he had no idea of the location of the 21 peat harvesting operations. There was no evidence presented as to why the Director issued the PTTW. Evidence presented at the hearing establishes that the Bog is sustainable in its present condition. It appeared to the Member that the demand for a PTTW was a quick fix to make sure that there was no depleting of the Bog of its water. This quick fix was unjustified and unreasonable since there was no evidence that the peat-harvesting operators were depleting the Bog of its water.

There is a clay layer slightly below ground level with a gravel aquifer. Most of the domestic wells are drawing their water from below this clay layer. The removal of the water from above this clay layer will have no effect on the aquifer below.

With regards to whether peat harvesting is defined as an agricultural or industrial activity, the Member concluded that peat harvesting, once completed, resulted in land being converted to agricultural use. This land, once converted, is agricultural land and can have drainage ditches without a PTTW. There is no legislative requirement that requires a PTTW for agricultural land.

There was no evidence presented showing that the peat harvesting activities are causing any shrinkage of the boundaries of the Bog. The Bog is almost entirely surrounded by municipal drains. This prevents any encroachment by either agricultural or peat harvesting activities. Of the 21 orders, there was one peat harvesting activity that was not being conducted to clear the land for agricultural activities. However, there was no evidence presented that this operation was having any detrimental effect on the water levels in the Bog.

The Member concluded that:

1. Public concerns regarding the detrimental effects to the Alfred Bog were unfounded.

2. Dewatering activities by peat harvesters:

    a) will not destroy the (flora and fauna) make-up of the Bog, and

    b) will not irremediably alter natural surface water bodies and thereby

    c) lower the local water table and affect nearby drinking water wells.

The peat harvesters should not be required to apply for a PTTW and a CofA. Therefore, the orders were revoked.

Released: January 26, 2004 (Case Nos.: 02-060, 02-071, 02-076, 02-077, 02-078, 02-079, 02-080)

Niagara Escarpment Planning and Development Act

Jack Flanagan v. Niagara Escarpment Commission

The Niagara Escarpment Commission ("Commission") refused a development permit for the conversion of an existing broiler chicken operation to a hog finishing operation to be operated by Jack Flanagan ("Appellant"). The Commission denied the development permit based on compatibility of land use issues, non-conformity with Minimum Distance Separation

Implementation Guideline ("Guideline"), and the City of Burlington's opposition to the issuance of the development permit.

Issue: The most important issues are whether the proposed operation conforms to the policies and objectives of the Niagara Escarpment Plan ("NEP") regarding compatibility of the land use, environmental sustainability and long term impacts on water and air quality; whether it is consistent with the Guideline; and whether the opposition of the City of Burlington is well founded.

Decision: There was concern among the local residents that a hog finishing operation was not compatible with the existing land uses in the area. The Appellant's evidence was that the impact of the poultry and proposed hog operations were relatively equivalent and would not change the amount of discharge on the land. The Appellant also submitted that the proposed operation was in harmony with the Public Policy Statement and the Halton and Burlington Official Plans, which supported viable agricultural operations in the Appellant's area. The Hearing Officer concluded that there was no proposed change of land use, but a conversion from one livestock category to another, which constitutes normal farm practice. There was no persuasive evidence of long-term impacts on air quality and best management practices would mitigate odours from the operation.

The Commission concluded that an application for a development permit would not be granted unless the applicant could meet the requirements present in the Guideline. The Commission concluded that an application for a development permit would trigger compliance with the requirements present in the Guideline. A major reason why the Commission denied the development permit was due to the Appellant's inability to satisfy the specified setbacks present in the Guideline. The Appellant could not meet the specified setbacks from the barns to the property lines.

Debate occurred at the hearing as to whether or not a development permit application would trigger compliance with the requirements present in the Guideline. The Commission did not state its reasons why it concluded that a development permit application would trigger the application of the Guideline. However, the Ontario Ministry of Agriculture and Food testified that, as custodians of the Guideline, they disagreed with the Commission. In their analysis, a development permit did not trigger the application of the Guideline. The City of Burlington stated that based on a strict reading of the Guideline, a development permit trigger is possible.

The Hearing Officer decided that a development permit application did not trigger the Guideline, especially when the application did not represent a new or expanded livestock facility. A building permit would trigger the application of the Guideline but no building permit was required in this case.

With regard to the opposition of the City of Burlington, the Hearing Officer stated that it would have supported the application had certain conditions been attached.

The Hearing Officer recommended that the Minister of Natural Resources issue the development permit for two years with certain conditions attached, keeping the operation environmentally sound with regard to issues such as odour. If after two years it is judged by the Commission that the operation has met all the conditions, the development permit could be made permanent.

Released: June 18, 2003 (Case No.: 02-228)

Note: On March 18, 2004, the Minister concurred with the recommendation of the Hearing Officer to issue a development permit for a period of two years. The Minister only partially concurred with the recommended conditions and directed the Commission to issue a development permit subject to the conditions.

Greg and Sharon Coxon v. Niagara Escarpment Commission

A development permit application filed by Greg and Sharon Coxon ("Appellants") were denied by the Niagara Escarpment Commission ("NEC") for the construction of an office addition to an existing barn, to recognize the use of the existing two-storey barn as a 70-pen dog kennel, to recognize the establishment of 33 fenced outdoor pens and a dog "playdome" partially open structure and to construct an enclosure for the existing dog pens allowing for additional pens expansion leaving 17 unenclosed pens. The NEC denied the development permit claiming that the application did not meet the Niagara Escarpment Plan ("NEP"). The NEP required all uses to be harmonious with the long-term capacity of a site to support a use without detrimental effects on the surrounding environment. Also, the application did not meet applicable municipal requirements as required by the NEP.

During the course of the hearing, many issues were discussed including noise concerns emanating from the site, the playdome structural work, whether the kennel was a permitted use, if the kennel space inside the barn was over and above the scale approved in the original development permit, compliance with the NEP, whether "fencing" was exempt from Ontario Regulation 828 definition of "structures" and if a dog kennel was an "agricultural use" because it amounted to "animal husbandry."

Issue: When considering all of these issues, can the Hearing Officers recommend to the Minister of Natural Resources ("Minister") that a development permit be issued?

Decision: The Hearing Officers recommended to the Minister that the proposal be approved with modifications and subject to certain conditions. The Hearing Officers recommended that a development permit be issued to allow for a dog kennel as outlined in the site plan with conditions. While the proposal was approved, it would be subject to this site plan. The Hearing Officers recommended that the application be approved due to the proposed development: being a permitted use in the Escarpment Protections Area designation; conforming to all relevant development criteria in the NEP; being consistent with regard to the provisions of the Regional Niagara Policy Statement conforming to the provisions of the Regional Niagara Policy Plan;

being consistent with the purpose and intent of the Town of Grimsby Official Plan; serving to reduce the potential for adverse noise; and representing sound and proper planning for its portion of the Niagara Escarpment.

Released: July 4, 2003 (Case No.: 02-103)

Note: On March 18, 2004, the Minister concurred with the recommendation of the Hearing Officers to issue a development permit. However, the Minister only partially concurred with the recommended conditions and directed the NEC to issue a development permit subject to the Minister's conditions.

Consolidated Hearings Act

Embee Properties Limited et al.

This motion was brought by the Niagara Escarpment Commission ("NEC"), the Ministry of Municipal Affairs and Housing, the Regional Municipality of Halton and the Corporation of the City of Burlington ("Moving Parties") regarding a Notice of Undertaking filed by Embee Properties Limited, Marie Baker Holdings Limited, Hilite Holdings Limited, Di Cenzo Construction Company Limited, Land Syndicate (Burlington) Limited, Chain Gate Developments Limited and Paletta International Corporation are the ("Proponents") of an undertaking to establish a "special study" area on a parcel of land located in the City of Burlington. This "special study" area is part of a larger parcel of land referred to as the "transfer lands". The "transfer lands" are currently designated under the Parkway Belt West Plan ("PBWP"). However, a related hearing before the Niagara Escarpment Hearing Office ("NEHO") was scheduled to begin on July 14, 2003 to possibly designate the "transfer lands" to the Niagara Escarpment Plan ("NEP") through the Niagara Escarpment Plan Amendment No. 71 ("NEPA 71")

The effect of this "special study" area would be to halt land use planning applications or proposals. This freeze would remain in effect until an environmental assessment was completed regarding the Mid-Peninsula Transportation Corridor ("MPTC"). The MPTC is a transportation project directed by the Ministry of Transportation ("MOT") to establish a transportation link across the Niagara Escarpment with the Greater Toronto Area. The MOT, at the time of this hearing was establishing the terms of reference for the environmental assessment study to determine the best location for the MPTC. It was quite possible that the MPTC could run across the "special study" area thus making the "special study" area significant as a development property.

To establish the "special study" area the Proponents filed an application to amend the NEP, an application to amend the PBWP, and an application to amend the Official Plan of the Region of Halton. The Proponents later filed a Notice of Undertaking with the Hearings Registrar asking that these three applications together with other applications listed in Schedule 1 of the decision

be consolidated pursuant to the *Consolidated Hearings Act* ("*CHA*"). A Joint Board was established. The Moving Parties brought a motion before the Joint Board asking for an order to dismiss the application to amend the PBWP or alternatively to defer the hearing of the application to be decided by the Minister of Municipal Affairs and Housing, to dismiss the application to amend the NEP or alternatively defer the matter to be decided by the NEC and the Minister of Natural Resources and the Lieutenant Governor in Council, and an order dismissing the application to amend the Region of Halton Official Plan or, in the alternative deferring the hearing of the appeal to be heard by the Ontario Municipal Board.

In support of the motion, the Moving Parties questioned whether NEPA 71 and other matters listed in Schedule 1 attached to the decision were part of the Proponents' written Notice of Undertaking and thus, properly before the Joint Board. Based on evidence presented by the Proponent, the Joint Board concluded that NEPA 71 and other matters as regards to the "special study" area were part of the Notice of Undertaking and thus, properly before the Joint Board.

The Moving Parties also argued for dismissal based on the Proponents' issues being able to be settled within the larger context of the NEPA 71 hearing, and that an amendment to the PBWP and the Region of Halton Official Plan is unnecessary due to s.14 of the Niagara Escarpment Planning and Development Act ("*NEPDA*") giving precedence to the NEP in event of a conflict between the NEP and a local plan covering the area. The Moving Parties also contended that they would be prejudiced by this matter going before the Joint Board and not being dealt with in its entirety at the NEPA 71 hearing. There would be a huge loss of time and resources spent over two years leading up to the main hearing regarding the NEPA 71. The Moving Parties claimed that the Proponents were "venue shopping" and "hijacked" the Moving Parties' rights to a full hearing of the NEPA 71 before a Hearing Officer. The Moving Parties also asked the Joint Board to consider the past motions and legal challenges brought by the Proponents in connection with NEPA 71. The Moving Parties argued that this matter was brought before a Joint Board in order to halt the proceedings before the Niagara Escarpment Hearing Office ("NEHO"). The Moving Parties argued that this action was an attack on the integrity of the process and an abuse of process.

Issue: Are there sufficient grounds to grant the Moving Parties' motion?

Decision: In making its decision the Joint Board applied the tests present in s. 17(45) of the *Planning Act*, s. 6.1(3) of the *NEPDA*, and s. 6 (4) of the *Ontario Planning and Development Act, 1994*. When comparing these tests to the Moving Parties' submissions the Joint Board concluded that the Moving Parties raised the following grounds in favour of their appeal. Those grounds are: the Proponents' application and the related appeals are unnecessary and without merit, the applications were brought for the purpose of delay, and the application constitutes an abuse of process and is not in the public interest. The Joint Board stated that dismissal is an extreme power to be used very cautiously due to the effect of removing a person's right to a full hearing.

The Joint Board did not grant any order to dismiss the application. The Joint Board made its decision based on the following conclusions: the application had merit based on two planning justification reports, there was no sign of delay, there was no abuse of process, the Proponents' applications were necessary due to it not being known what the NEPA 71 hearing would decide, there was no prejudice to the Moving Parties since the Moving Parties can incorporate their preparations regarding the NEHO hearing into the consolidated hearing thus not incurring any delays, and it was premature to decide whether the application was in the public interest since it had not been heard before the NEHO. For the above reasons, as well that all objectives of the *CHA* were being met, and after an analysis of s.20 and s.24 of the *CHA*, the Joint Board did not grant deferral to the original Tribunals. The Joint Board also concluded that pursuant to s.20 of the *CHA*, the NEHO could hear the NEPA 71 matter except for the part that related to the Proponents' undertaking. The Moving Parties have applied for a Judicial Review with Divisional Court.

Released: July 9, 2003 (Case No.: 02-244)

Summary of a Judicial Review Application of a Decision of the Tribunal

Ellen Smith et al. v. Ontario Environmental Review Tribunal, Director, Ministry of the Environment and Inco Limited

Although this Judicial Review was decided at the end of the 2002-2003 fiscal year and having been released on March 24, 2003, this decision is reported in the 2003-2004 annual report.

This Judicial Review challenged the Environmental Review Tribunal's ("Tribunal") decision to limit the grounds of appeal under s.41 of the *Environmental Bill of Rights, 1993* ("*EBR*") to one ground rather than the eight grounds suggested by the Applicants for Judicial Review. The Tribunal concluded that only one ground satisfied the leave to appeal test under s.41. Leave to appeal was granted and the Tribunal concluded that based on the scope of the Director's order the argument on appeal would be limited to only the one ground on which leave to appeal was granted. The Applicants' file for Judicial Review of this decision arguing that once leave to appeal is granted, even if only on one ground, all eight grounds can be argued on appeal.

The Applicants argued that once leave to appeal was granted other grounds of appeal could be added under s.144 of the *Environmental Protection Act* ("*EPA*"). The Applicants also took the position that the Tribunal had acted beyond its jurisdiction by considering the scope of the Director's order when considering evidence.

Issues:

1. Can the Tribunal limit the grounds of an appeal to the grounds that meet the s.41 leave to appeal test under the *EBR*?
2. Can the Tribunal limit the grounds of appeal to the scope of the Director's order?

Decision: The Divisional Court ruled that the Tribunal could limit the grounds of appeal to only those grounds that meet the s.41 leave to appeal test under the *EBR*. The Divisional Court found no authority to support the Applicants' argument in this regard.

The Divisional Court also ruled that the Tribunal had jurisdiction to decide the grounds of appeal that are relevant to the scope of the Director's order and the "subject matter of the hearing". If a ground of appeal is challenged, it is within the Tribunal's jurisdiction to decide whether or not the ground comes within the "subject matter of the hearing" under s.144(1) of the *EPA*.

The Divisional Court dismissed the Judicial Review application in this matter.

Released: March 24, 2003 (Court File No. 736/02)

Report on Performance Measures
Fiscal Year 2003-2004

For fiscal year 2003-2004, the Environmental Review Tribunal ("Tribunal") adopted nine goals as critical to effective and efficient performance and service quality in its main functions of Outreach, Mediation, Staff Processing of Hearings, and Hearings and Decision Making.

In this fiscal year, the Tribunal met or exceeded the performance measures in eight out of nine targeted areas. For Key Performance Goals and Objectives for the next fiscal year 2004-2005 refer to Appendix D.

Commitment #1: Public Education and Information Sessions

"Public education and information sessions will be used to promote public awareness and knowledge of the Tribunal's mandate and hearing process."

Over the past few years, many of the Tribunal's cases that proceeded to a full hearing process have become more complex. This complexity of cases required the Tribunal to develop ways to educate the public in the hearing process. It is essential to public participation and awareness to offer the services of public information sessions prior to the commencement of the main hearing of evidence in hearings where there is a large public interest. These sessions educate the public on how they can participate in the hearing process.

In order to ensure the public understood the various ways they could participate during a hearing, the Tribunal developed a protocol to effectively identify when public information sessions should be held and how they should be conducted. PowerPoint presentations were developed and presented by staff at public information sessions prior to the commencement of the formal hearing. Notice of these events was advertised in local area newspapers. This fiscal year, the Tribunal conducted two public information sessions. The two hearings in which public information sessions were held, appeared when they were scheduled to have a large public interest in the appeals. The Tribunal relies on information from the parties to determine whether or not a public information session will be required. At times, it is difficult to determine this prior to the commencement of a hearing. If a hearing is held where no public information session was conducted and there is a large public interest, the Tribunal Member will explain to the public the avenues for participation in the hearing process.

Commitment #2: Website Access

"The Tribunal will use its website to communicate with its clients."

The public has embraced the website as the primary way to access information about the Tribunal and its processes. From April 1, 2003 to March 31, 2004, the Tribunal had a total of 16,270 visitors to its site and a total of 614,628 "hits" on specific pages in the site. Eight

decisions of the Tribunal were downloaded over 1,000 times. Other documents on the website, such as environmental legislation or copies of the Tribunal's Rules of Practice, were also downloaded several thousand times. During the year there were over 111,207 separate downloads of documents from its website, including over 94,000 downloads of Tribunal decisions and orders. The Tribunal uses a tracking system called "Webtrends" to monitor its website statistics. For a list of the most popular downloads, refer to Appendix E.

The staff update the website three to five times weekly. With the exception of a few hours each month for website maintenance and during the power outage of August 2003, the website is available at all times. If the gateway for the Ontario Government were not in service, the Tribunal's website would not be operational.

The Tribunal continues to ensure that the public has access to the most current documents available. Rules of Practice, Practice Directions and Guidelines, as well as the current published annual report, business plan and Guides are posted.

In the last fiscal year, the Tribunal undertook a major review of the configuration of the website to ensure that it was providing the best access for the user. This year the Tribunal upgraded access for its users by posting all orders issued by the Tribunal. Previously, users could only access final decisions issued.

Commitment #3: Guides

"Guides will be updated."

Last fiscal year, the Tribunal undertook a thorough rewrite of its Guides. This year the Guides were up-to-date with the exception of the inclusion of appeals under the *Safe Drinking Water Act*. A Guide to Appeals under the Environmental Protection Act, the *Ontario Water Resources Act*, the *Safe Drinking Water Act*, and the *Pesticides Act*" has been updated to reflect the addition of appeals under the *Safe Drinking Water Act*.

Commitment #4: Mediation Services

"Offer mediation services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing."

Mediation services are available to all parties in matters before the Tribunal. The Tribunal formally offers these services in every appeal and, upon request, in all applications in order to encourage parties to resolve their issues. In this fiscal year, parties participated in mediations during the hearing process in 39 cases compared to 72 and 35 cases, respectively, in the last two fiscal years. Of the 39 cases where mediation services were provided, 15 cases were withdrawn or the Ministry of the Environment revoked the instrument which was the subject of the appeal;

19 cases progressed to a full hearing of evidence and five cases were still ongoing as of March 31, 2004. The number of appeals withdrawn or instruments revoked may well overstate the success of the mediation process. However, success of mediation is understated in many cases which continued to a full hearing, as mediation may have helped to resolve some issues and to narrow the scope of the hearing.

Senior staff and Tribunal members who conducted mediation sessions were certified through an accredited course.

All participants in each mediation session were sent a questionnaire which included questions on their level of satisfaction with the mediation process and the Tribunal's involvement. Of the responses received, 89% expressed overall satisfaction with the mediation process.

Commitment #5: Timeliness in Scheduling Hearings

"Improve the timeliness in scheduling hearings."

The Tribunal adopted a 30 calendar day timeliness standard to issue a Notice of Hearing on appeals, starting on the day on which the appeal/application is received. The Tribunal met the timeframe, as the average time to issue the Notice of Hearing from the date of receipt was 24 days.

The staff met the seven calendar day expectation to schedule an appeal/application after the parties provided all necessary documentation. This year the average was seven calendar days.

Commitment #6: Courtesy

"Tribunal members will treat all participants in a hearing with courtesy and respect."

Questionnaires were developed and given (along with a self-addressed stamped envelope) to every party and every representative of a party and every participant at a hearing during this fiscal year. These questionnaires continue to be used for a variety of purposes in order to improve the hearing processes. The questionnaires include questions related explicitly to the perception of the parties and their representatives concerning the courtesy of Tribunal members during the hearing process. Of the responses received, the Tribunal scored 93% relating to member courtesy. The number of completed questionnaires returned to the Tribunal has decreased every fiscal year. This may be because every appeal before the Tribunal or the Niagara Escarpment Hearing Office has a party from the Ministry of the Environment or the Niagara Escarpment Commission, respectively, who may find it repetitive to complete the questionnaires after every hearing when no new information is reported.

The Tribunal has a formal policy and process for complaints received from the parties or the public concerning its members. The Tribunal received two complaints this fiscal year and the Tribunal adhered to its complaints policy.

Commitment #7: Decisions

"Tribunal members will render timely decisions."

All recommendations/decisions made under the *Niagara Escarpment Planning and Development Act* on development permit applications are required by legislation to be made within 30 days of the conclusion of the hearing or within such longer period as the Minister of Natural Resources may allow. Niagara Escarpment Plan amendment application decisions must be rendered not more than 60 days after the conclusion of the hearing or within such extended time as the Niagara Escarpment Commission may specify. Tribunal decisions on the *Environmental Bill of Rights, 1993* leave to appeal applications are to be made within 30 days after the day on which the application is filed, unless the Tribunal determines that, because of unusual circumstances, a longer period is needed. In all other types of decisions, Tribunal members endeavour to render their decisions within 30 days of the completion of the hearing or the filing of final written submissions (if ordered by the hearing panel).

For the purposes of this performance measure, the criterion was defined as *"Decisions will be rendered within 30 days of final argument, excepting hearings with legislative timelines."* For the fiscal year 2003-2004, the timeliness of decisions rendered was for the decisions under the legislation not noted above. This would include decisions rendered for appeals under the *Environmental Protection Act*, the *Ontario Water Resources Act* and the *Safe Drinking Water Act*. There were no appeals under the *Pesticides Act* or the *Nutrient Management Act, 2002* or applications under the *Environmental Assessment Act*, the *Environmental Protection Act* and the *Ontario Water Resources Act*. In 68% of these cases, members released their decisions within 30 days of the final argument. As this figure is below the 90% performance measure, the Tribunal is assessing the cases where the performance measure was not met, with a view to improving performance in this area. In this fiscal year, the Tribunal implemented regular in-house training sessions for members.

Commitment #8: Training of Members

"Training of Members."

Members are trained in the conduct of hearings, knowledge of legislation and Tribunal Rules, decision writing and mediation. This is achieved in various ways. New members received one-on-one training about the legislation, conduct of hearings, the Rules of Practice and decision writing from in-house staff. Members attend training courses on adjudication and decision writing conducted by the Society of Ontario Adjudicators and Regulators. Stitt, Feld, Handy offers a five day course on alternative dispute resolution which new members attend. Members also attend hearings, first as an observer, then as a member of a hearing panel and finally conduct hearings independently.

Members should be able to conduct hearing independent after one year of their appointment. In this fiscal year, the Tribunal did not have any members who had been appointed for one full

year. The Tribunal strengthened its training for full-time members by expanding its Learning Program to include two sessions regarding the legislation and Rules. The Tribunal has continued this program into the next fiscal year. The Learning Program is outlined in Appendix D.

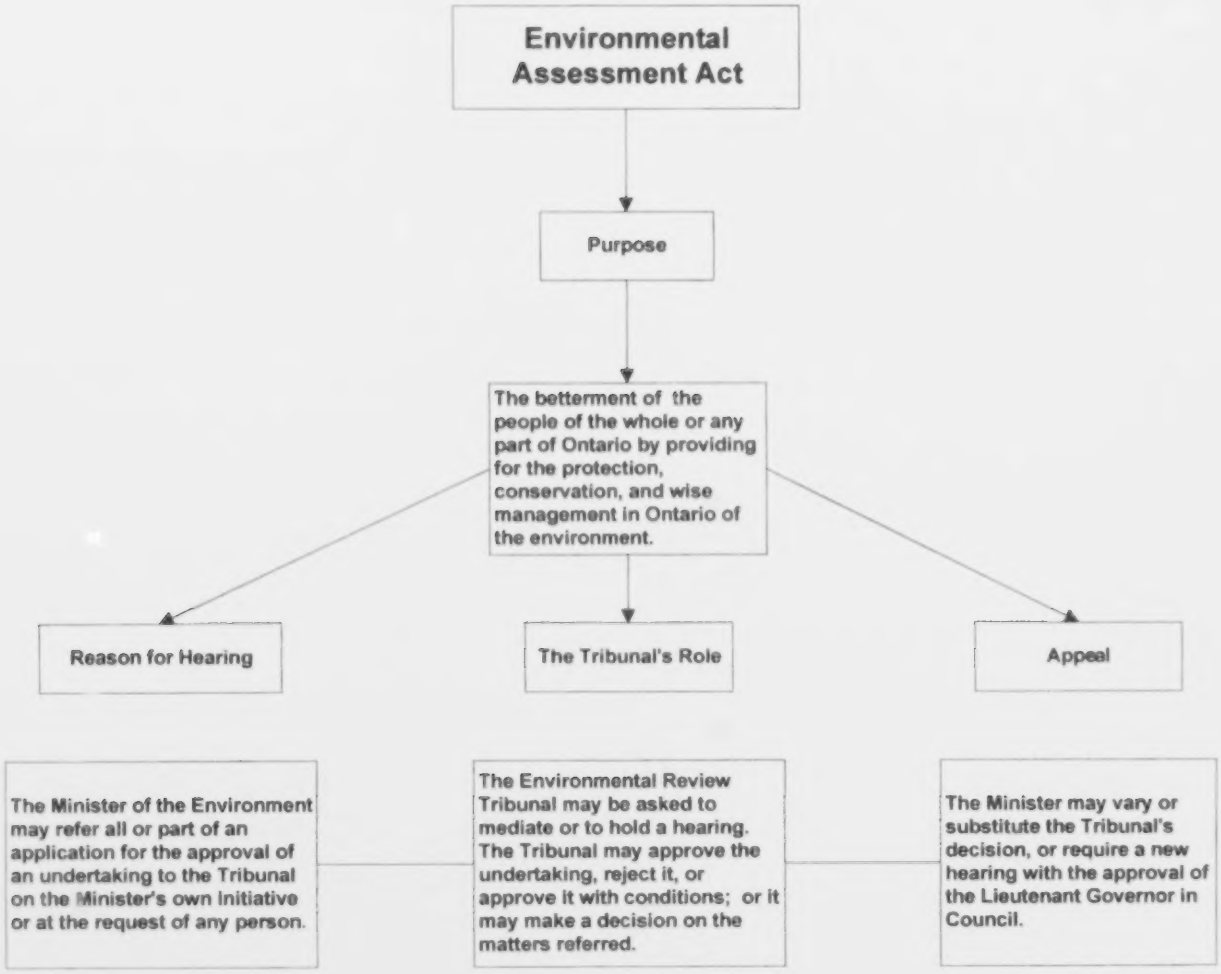
Commitment #9: Appeals and judicial review of Tribunal Decisions

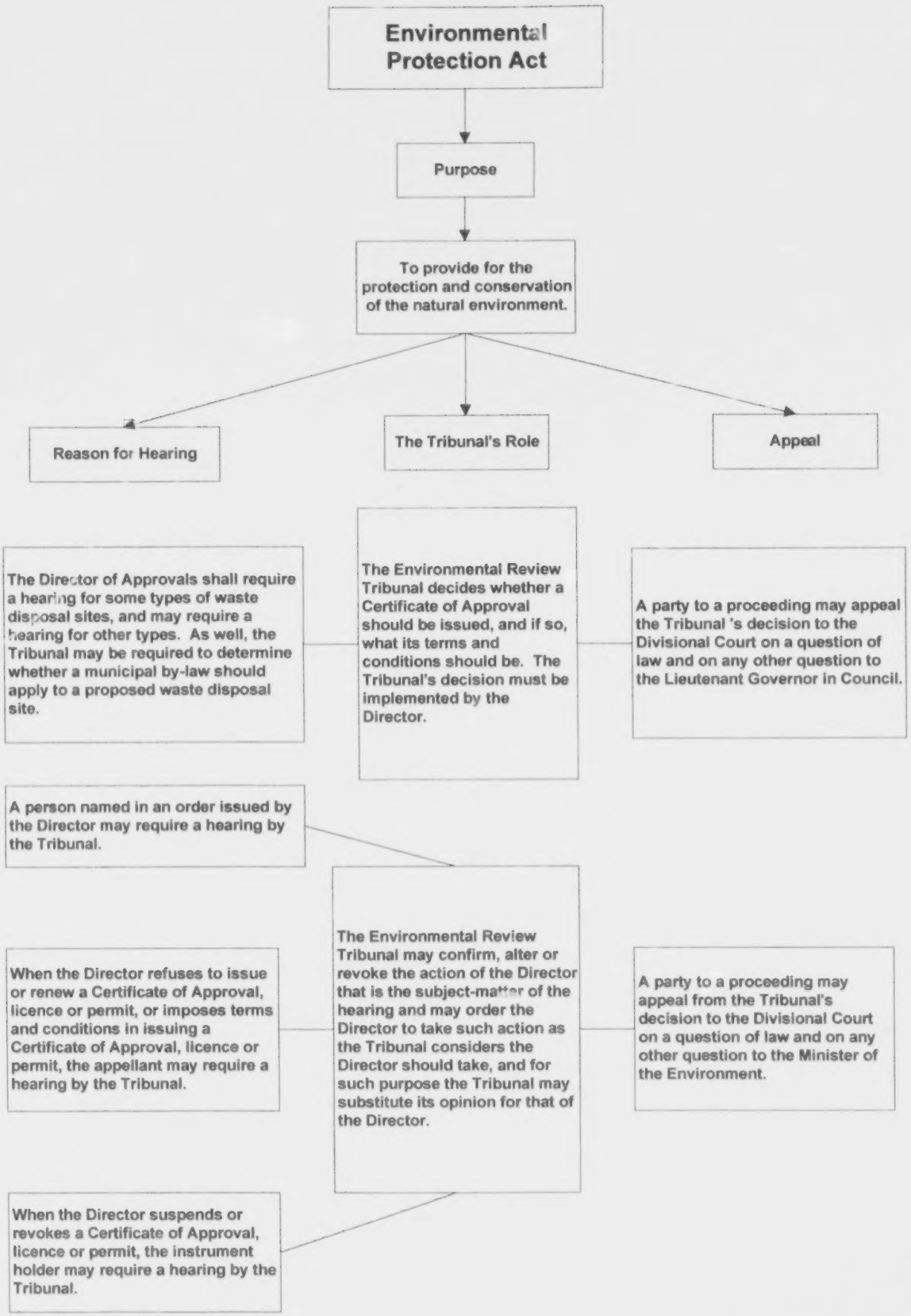
"Appeals and judicial review of Tribunal Decisions."

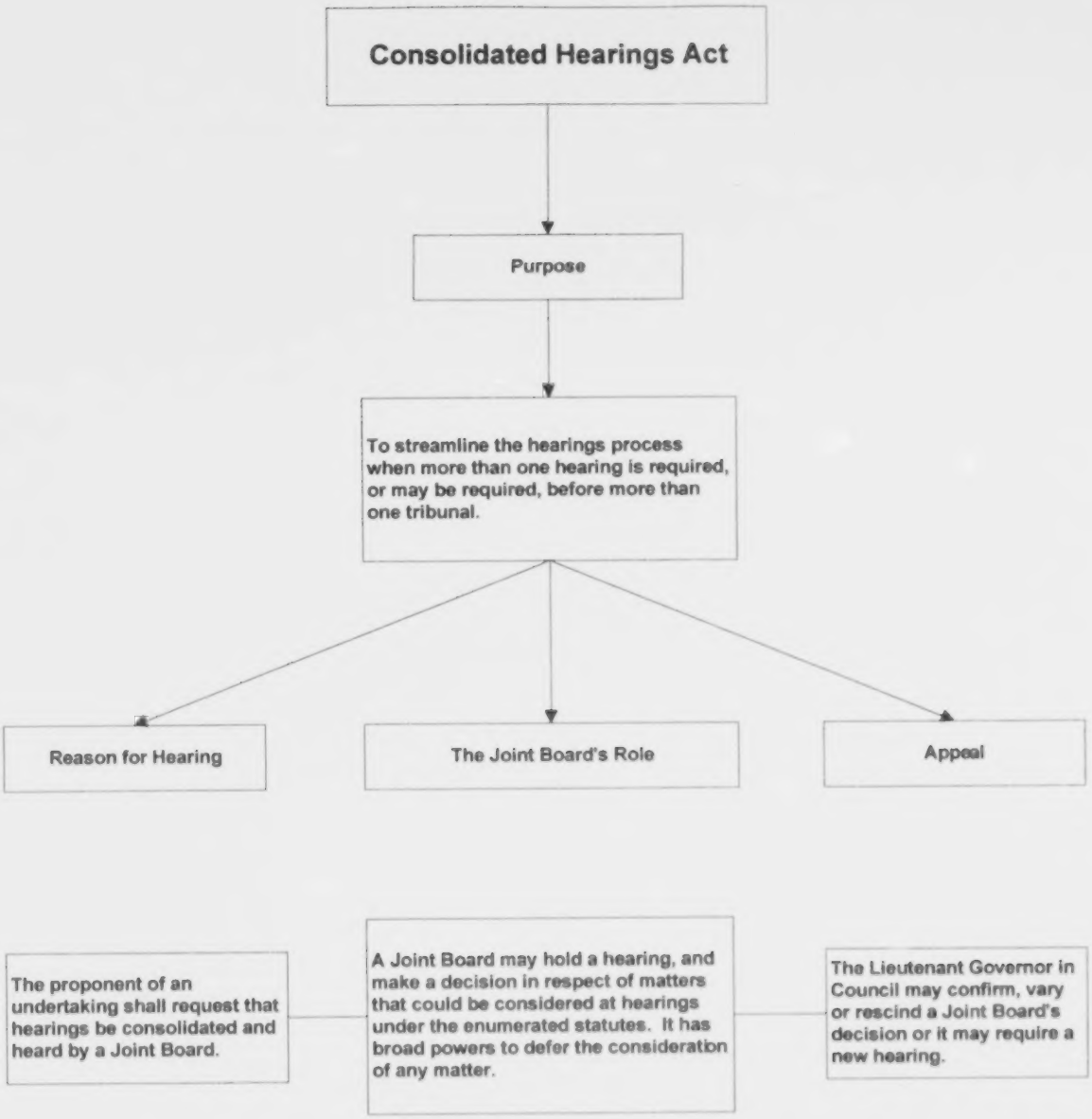
The Tribunal has committed to report on the outcome of any appeal or judicial review applications of its decisions. This fiscal year, the Tribunal did not receive any decisions on appeals resulting from its decisions. However, on March 25, 2003, at the end of last fiscal year, the Tribunal received a court decision reported in this annual report under Summary of a Judicial Review Application of a Decision of the Tribunal.

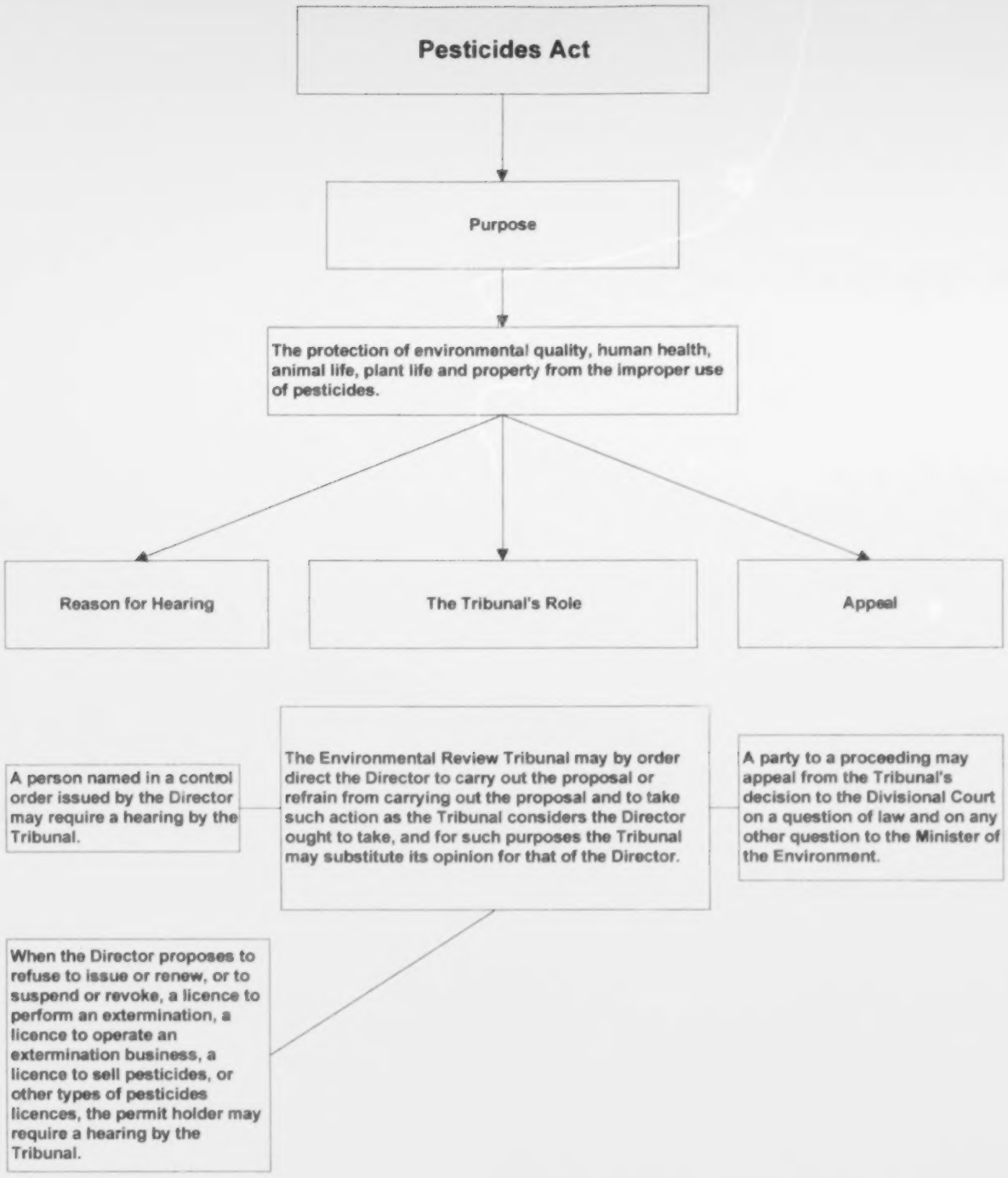
Appendix A

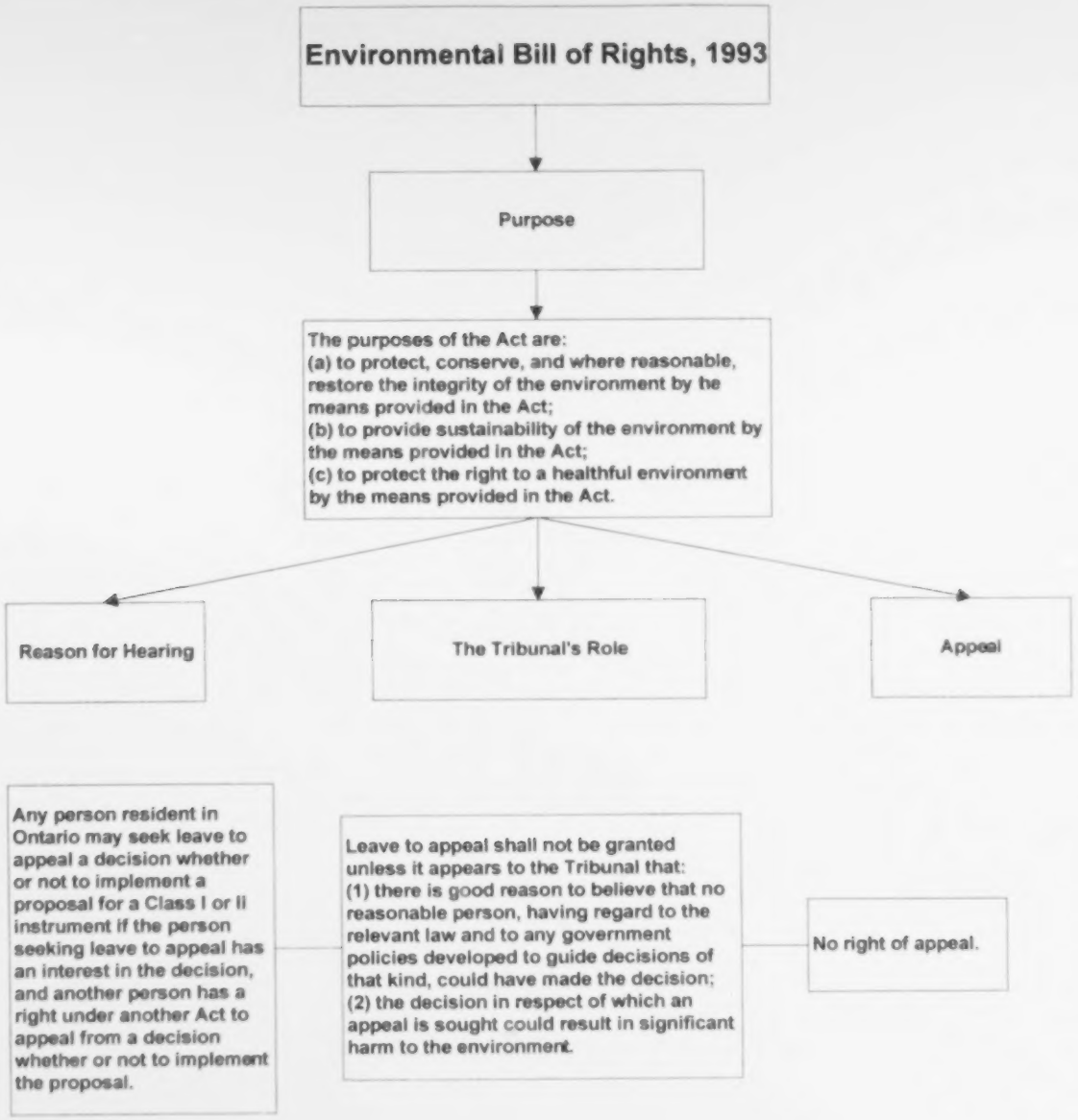
Overview of Relevant Legislation

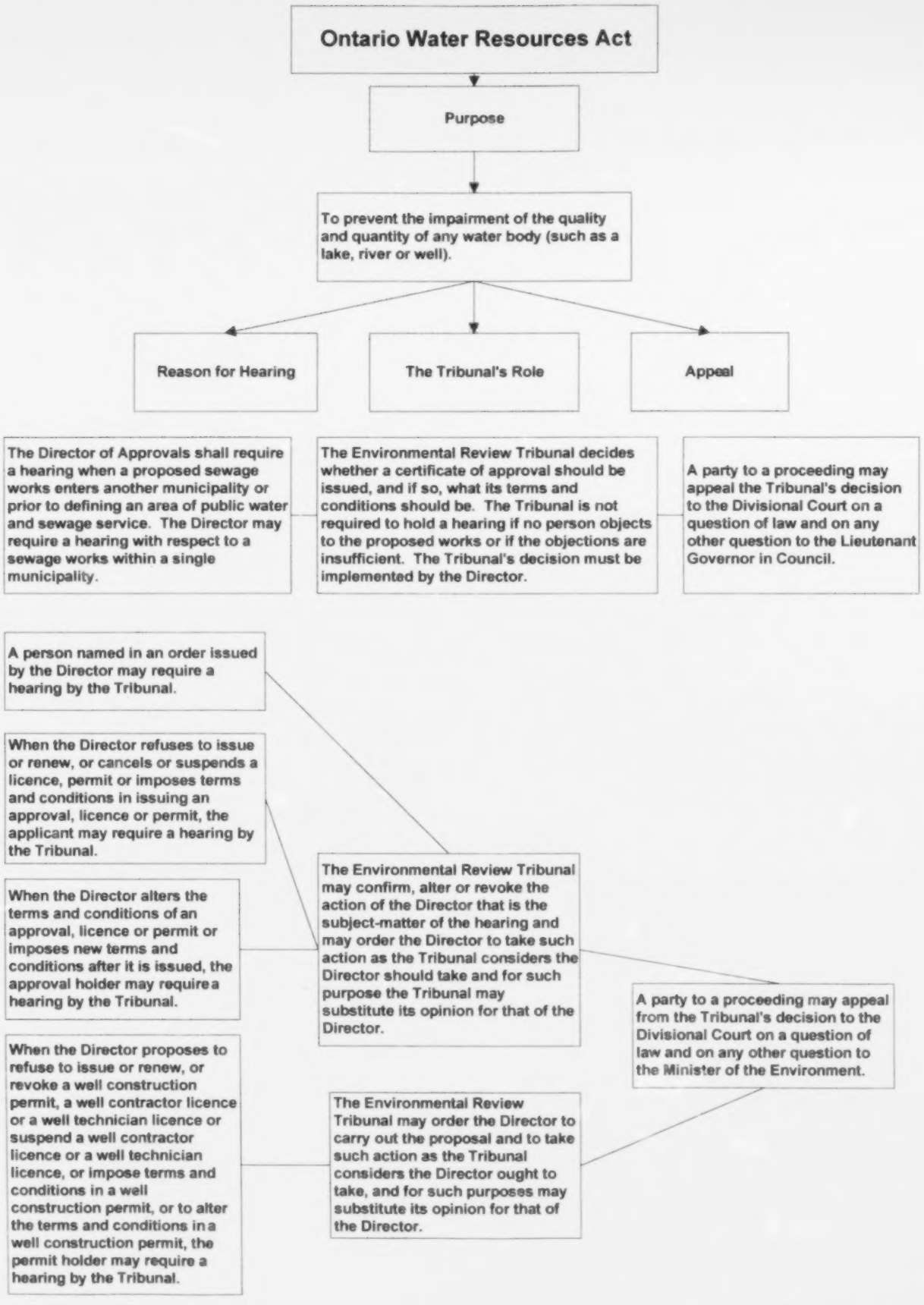

Environmental Assessment Act
Purpose
The betterment of the people of the whole or any part of Ontario by providing for the protection, conservation, and wise management in Ontario of the environment.
Reason for Hearing
The Tribunal's Role
Appeal
The Minister of the Environment may refer all or part of an application for the approval of an undertaking to the Tribunal on the Minister's own initiative or at the request of any person.
The Environmental Review Tribunal may be asked to mediate or to hold a hearing. The Tribunal may approve the undertaking, reject it, or approve it with conditions; or it may make a decision on the matters referred.
The Minister may vary or substitute the Tribunal's decision, or require a new hearing with the approval of the Lieutenant Governor in Council.

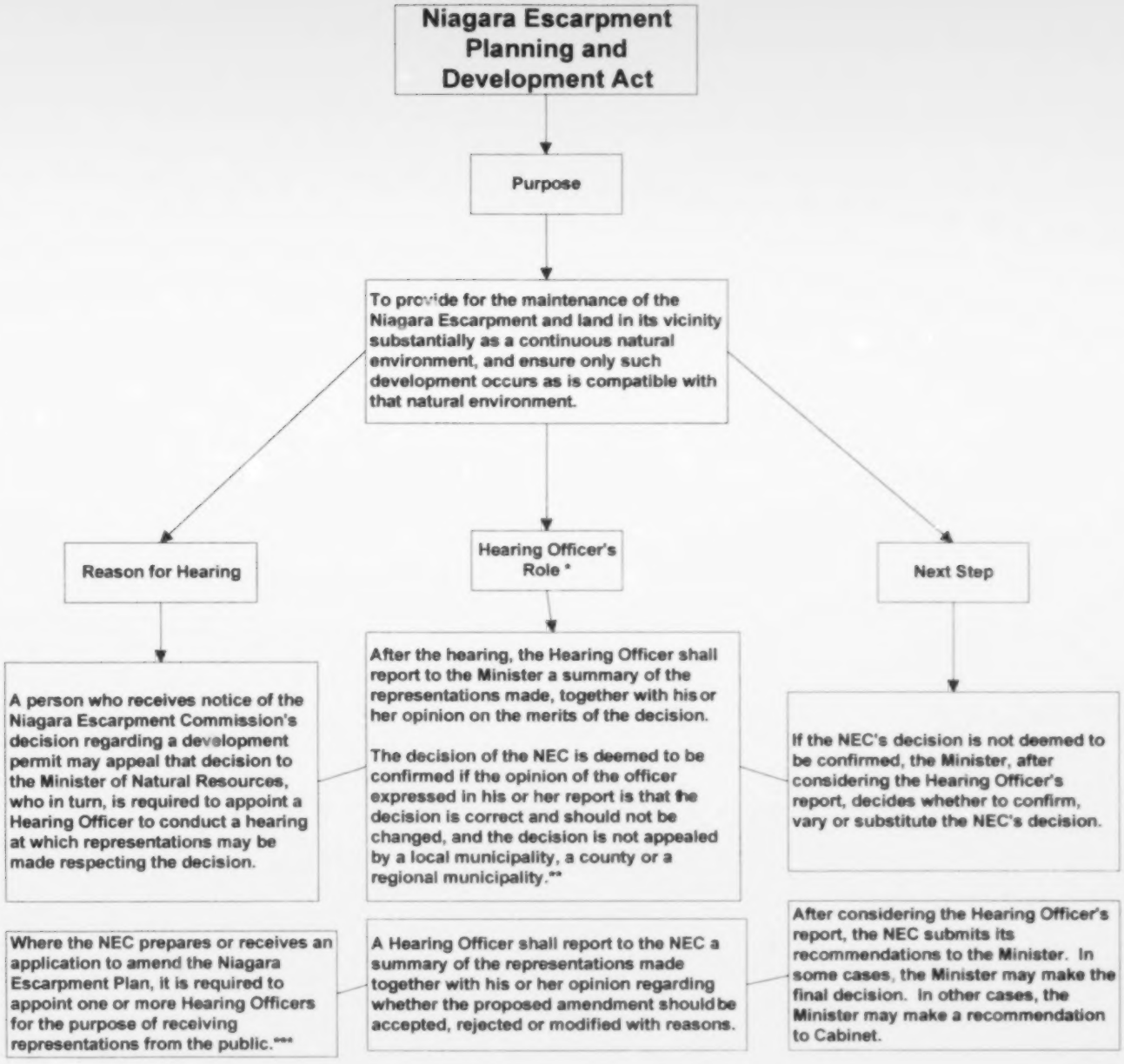

Environmental Protection Act
Purpose
To provide for the protection and conservation of the natural environment.
Reason for Hearing
The Tribunal's Role
Appeal
The Director of Approvals shall require a hearing for some types of waste disposal sites, and may require a hearing for other types. As well, the Tribunal may be required to determine whether a municipal by-law should apply to a proposed waste disposal site.
The Environmental Review Tribunal decides whether a Certificate of Approval should be issued, and if so, what its terms and conditions should be. The Tribunal's decision must be implemented by the Director.
A party to a proceeding may appeal the Tribunal 's decision to the Divisional Court on a question of law and on any other question to the Lieutenant Governor in Council.
A person named in an order issued by the Director may require a hearing by the Tribunal.
When the Director refuses to issue or renew a Certificate of Approval, licence or permit, or imposes terms and conditions in issuing a Certificate of Approval, licence or permit, the appellant may require a hearing by the Tribunal.
The Environmental Review Tribunal may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing and may order the Director to take such action as the Tribunal considers the Director should take, and for such purpose the Tribunal may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.
When the Director suspends or revokes a Certificate of Approval, licence or permit, the instrument holder may require a hearing by the Tribunal.


Consolidated Hearings Act
Purpose
To streamline the hearings process when more than one hearing is required, or may be required, before more than one tribunal.
Reason for Hearing
The Joint Board's Role
Appeal
The proponent of an undertaking shall request that hearings be consolidated and heard by a Joint Board.
A Joint Board may hold a hearing, and make a decision in respect of matters that could be considered at hearings under the enumerated statutes. It has broad powers to defer the consideration of any matter.
The Lieutenant Governor in Council may confirm, vary or rescind a Joint Board's decision or it may require a new hearing.


Pesticides Act
Purpose
The protection of environmental quality, human health, animal life, plant life and property from the improper use of pesticides.
Reason for Hearing
The Tribunal's Role
Appeal
A person named in a control order issued by the Director may require a hearing by the Tribunal.
The Environmental Review Tribunal may by order direct the Director to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Director ought to take, and for such purposes the Tribunal may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.
When the Director proposes to refuse to issue or renew, or to suspend or revoke, a licence to perform an extermination, a licence to operate an extermination business, a licence to sell pesticides, or other types of pesticides licences, the permit holder may require a hearing by the Tribunal.


Environmental Bill of Rights, 1993
Purpose
The purposes of the Act are:
(a) to protect, conserve, and where reasonable, restore the integrity of the environment by the means provided in the Act;
(b) to provide sustainability of the environment by the means provided in the Act;
(c) to protect the right to a healthful environment by the means provided in the Act.
Reason for Hearing
The Tribunal's Role
Appeal
Any person resident in Ontario may seek leave to appeal a decision whether or not to implement a proposal for a Class I or II instrument if the person seeking leave to appeal has an interest in the decision, and another person has a right under another Act to appeal from a decision whether or not to implement the proposal.
Leave to appeal shall not be granted unless it appears to the Tribunal that:
(1) there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision;
(2) the decision in respect of which an appeal is sought could result in significant harm to the environment.
No right of appeal.

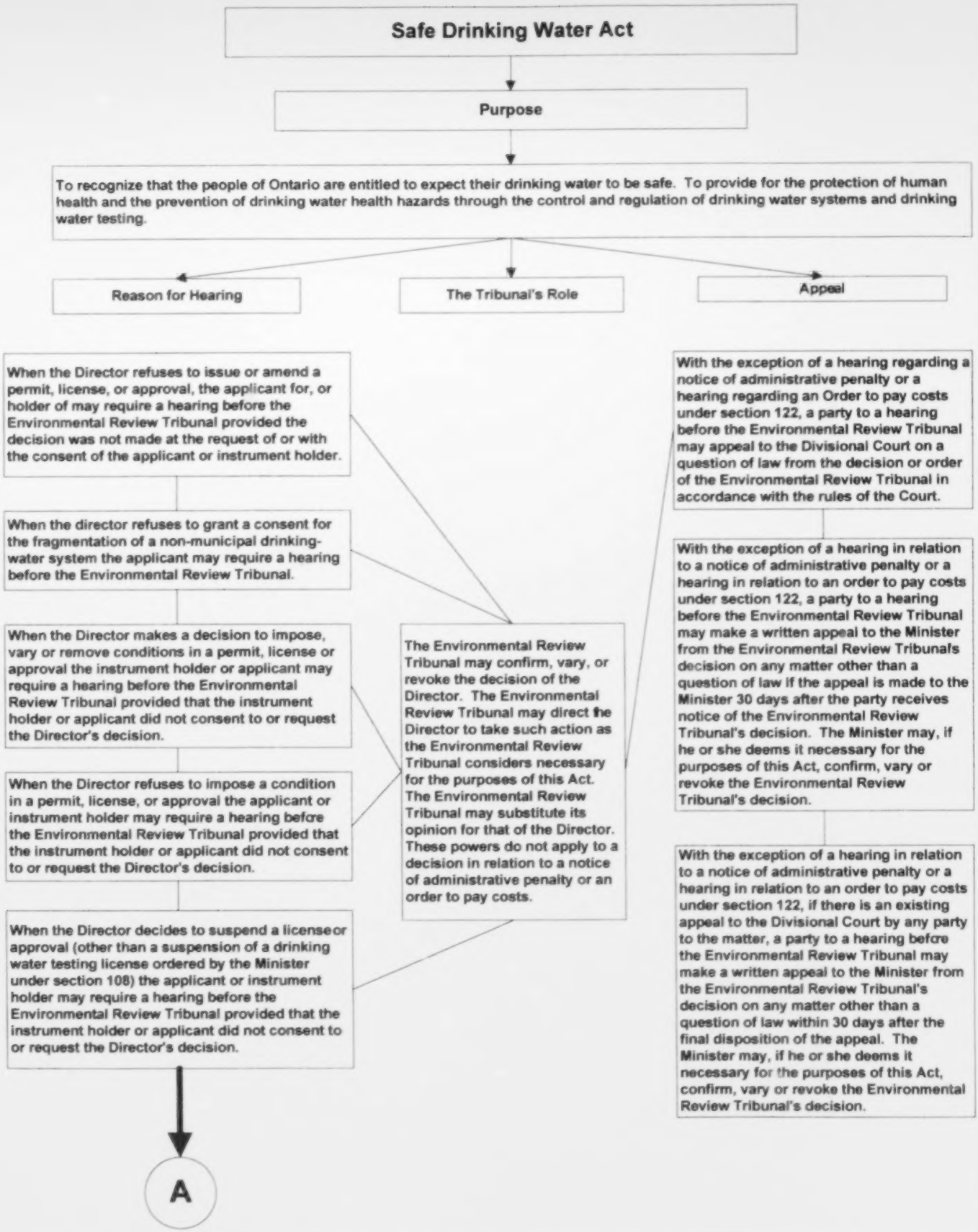

Ontario Water Resources Act
Purpose
To prevent the impairment of the quality and quantity of any water body (such as a lake, river or well).
Reason for Hearing
The Tribunal's Role
Appeal
The Director of Approvals shall require a hearing when a proposed sewage works enters another municipality or prior to defining an area of public water and sewage service. The Director may require a hearing with respect to a sewage works within a single municipality.
The Environmental Review Tribunal decides whether a certificate of approval should be issued, and if so, what its terms and conditions should be. The Tribunal is not required to hold a hearing if no person objects to the proposed works or if the objections are insufficient. The Tribunal's decision must be implemented by the Director.
A party to a proceeding may appeal the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Lieutenant Governor in Council.
A person named in an order issued by the Director may require a hearing by the Tribunal.
When the Director refuses to issue or renew, or cancels or suspends a licence, permit or imposes terms and conditions in issuing an approval, licence or permit, the applicant may require a hearing by the Tribunal.
When the Director alters the terms and conditions of an approval, licence or permit or imposes new terms and conditions after it is issued, the approval holder may require a hearing by the Tribunal.
When the Director proposes to refuse to issue or renew, or revoke a well construction permit, a well contractor licence or a well technician licence or suspend a well contractor licence or a well technician licence, or impose terms and conditions in a well construction permit, or to alter the terms and conditions in a well construction permit, the permit holder may require a hearing by the Tribunal.
The Environmental Review Tribunal may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing and may order the Director to take such action as the Tribunal considers the Director should take and for such purpose the Tribunal may substitute its opinion for that of the Director.
The Environmental Review Tribunal may order the Director to carry out the proposal and to take such action as the Tribunal considers the Director ought to take, and for such purposes may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.

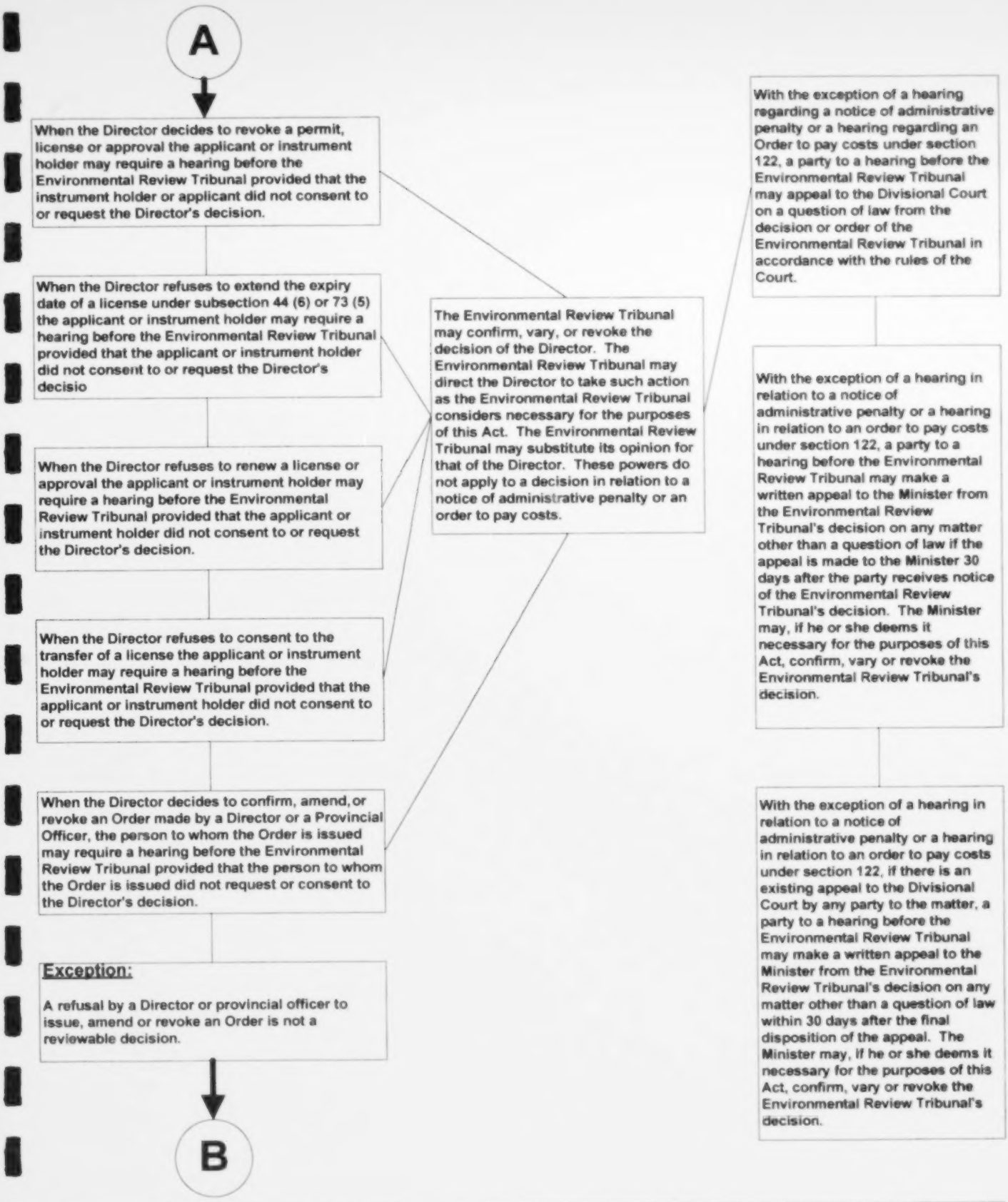

Niagara Escarpment Planning and Development Act
Purpose
To provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and ensure only such development occurs as is compatible with that natural environment.
Reason for Hearing
Hearing Officer's Role *
Next Step
A person who receives notice of the Niagara Escarpment Commission's decision regarding a development permit may appeal that decision to the Minister of Natural Resources, who in turn, is required to appoint a Hearing Officer to conduct a hearing at which representations may be made respecting the decision.
After the hearing, the Hearing Officer shall report to the Minister a summary of the representations made, together with his or her opinion on the merits of the decision.
The decision of the NEC is deemed to be confirmed if the opinion of the officer expressed in his or her report is that the decision is correct and should not be changed, and the decision is not appealed by a local municipality, a county or a regional municipality.**
If the NEC's decision is not deemed to be confirmed, the Minister, after considering the Hearing Officer's report, decides whether to confirm, vary or substitute the NEC's decision.
Where the NEC prepares or receives an application to amend the Niagara Escarpment Plan, it is required to appoint one or more Hearing Officers for the purpose of receiving representations from the public.***
A Hearing Officer shall report to the NEC a summary of the representations made together with his or her opinion regarding whether the proposed amendment should be accepted, rejected or modified with reasons.
After considering the Hearing Officer's report, the NEC submits its recommendations to the Minister. In some cases, the Minister may make the final decision. In other cases, the Minister may make a recommendation to Cabinet.

*Members of the Environmental Review Tribunal may be appointed as Hearing Officers under the *Niagara Escarpment Planning and Development Act* ("*NEPDA*") to hear appeals of Niagara Escarpment Commission decisions on development permits and to conduct hearings on applications to amend the Niagara Escarpment Plan.

**Since the proclamation of the *Red Tape Reduction Act, 2000*, S.O. 2000, c. 26 (Bill 119) amendments to the *NEPDA*, deemed confirmations can also occur where the parties have reached a settlement on the conditions of the development permit. The decision of the NEC may be deemed confirmed prior to going to the Minister if (a) the decision was to issue a development permit; (b) the parties who appeared at the hearing have agreed on all of the terms and conditions that should be included in the development permit, and these are set out in the Hearing Officer's report; and (c) it is the Hearing Officer's opinion in the report that the decision to issue the development permit with the agreed terms and conditions would be correct and should not be changed.

***Hearing Officers are normally appointed by the NEC to conduct hearings on proposed Plan amendments only if objections are made to the proposed amendments.


Safe Drinking Water Act
Purpose
To recognize that the people of Ontario are entitled to expect their drinking water to be safe. To provide for the protection of human health and the prevention of drinking water health hazards through the control and regulation of drinking water systems and drinking water testing.
Reason for Hearing
The Tribunal's Role
Appeal
When the Director refuses to issue or amend a permit, license, or approval, the applicant for, or holder of may require a hearing before the Environmental Review Tribunal provided the decision was not made at the request of or with the consent of the applicant or instrument holder.
When the director refuses to grant a consent for the fragmentation of a non-municipal drinking-water system the applicant may require a hearing before the Environmental Review Tribunal.
When the Director makes a decision to impose, vary or remove conditions in a permit, license or approval the instrument holder or applicant may require a hearing before the Environmental Review Tribunal provided that the instrument holder or applicant did not consent to or request the Director's decision.
When the Director refuses to impose a condition in a permit, license, or approval the applicant or instrument holder may require a hearing before the Environmental Review Tribunal provided that the instrument holder or applicant did not consent to or request the Director's decision.
When the Director decides to suspend a license or approval (other than a suspension of a drinking water testing license ordered by the Minister under section 108) the applicant or instrument holder may require a hearing before the Environmental Review Tribunal provided that the instrument holder or applicant did not consent to or request the Director's decision.
The Environmental Review Tribunal may confirm, vary, or revoke the decision of the Director. The Environmental Review Tribunal may direct the Director to take such action as the Environmental Review Tribunal considers necessary for the purposes of this Act. The Environmental Review Tribunal may substitute its opinion for that of the Director. These powers do not apply to a decision in relation to a notice of administrative penalty or an order to pay costs.
With the exception of a hearing regarding a notice of administrative penalty or a hearing regarding an Order to pay costs under section 122, a party to a hearing before the Environmental Review Tribunal may appeal to the Divisional Court on a question of law from the decision or order of the Environmental Review Tribunal in accordance with the rules of the Court.
With the exception of a hearing in relation to a notice of administrative penalty or a hearing in relation to an order to pay costs under section 122, a party to a hearing before the Environmental Review Tribunal may make a written appeal to the Minister from the Environmental Review Tribunals decision on any matter other than a question of law if the appeal is made to the Minister 30 days after the party receives notice of the Environmental Review Tribunal's decision. The Minister may, if he or she deems it necessary for the purposes of this Act, confirm, vary or revoke the Environmental Review Tribunal's decision.
With the exception of a hearing in relation to a notice of administrative penalty or a hearing in relation to an order to pay costs under section 122, if there is an existing appeal to the Divisional Court by any party to the matter, a party to a hearing before the Environmental Review Tribunal may make a written appeal to the Minister from the Environmental Review Tribunal's decision on any matter other than a question of law within 30 days after the final disposition of the appeal. The Minister may, if he or she deems it necessary for the purposes of this Act, confirm, vary or revoke the Environmental Review Tribunal's decision.
A


A
When the Director decides to revoke a permit, license or approval the applicant or instrument holder may require a hearing before the Environmental Review Tribunal provided that the instrument holder or applicant did not consent to or request the Director's decision.
When the Director refuses to extend the expiry date of a license under subsection 44 (6) or 73 (5) the applicant or instrument holder may require a hearing before the Environmental Review Tribunal provided that the applicant or instrument holder did not consent to or request the Director's decisio
When the Director refuses to renew a license or approval the applicant or instrument holder may require a hearing before the Environmental Review Tribunal provided that the applicant or instrument holder did not consent to or request the Director's decision.
When the Director refuses to consent to the transfer of a license the applicant or instrument holder may require a hearing before the Environmental Review Tribunal provided that the applicant or instrument holder did not consent to or request the Director's decision.
When the Director decides to confirm, amend, or revoke an Order made by a Director or a Provincial Officer, the person to whom the Order is issued may require a hearing before the Environmental Review Tribunal provided that the person to whom the Order is issued did not request or consent to the Director's decision.
Exception:
A refusal by a Director or provincial officer to issue, amend or revoke an Order is not a reviewable decision.
B
The Environmental Review Tribunal may confirm, vary, or revoke the decision of the Director. The Environmental Review Tribunal may direct the Director to take such action as the Environmental Review Tribunal considers necessary for the purposes of this Act. The Environmental Review Tribunal may substitute its opinion for that of the Director. These powers do not apply to a decision in relation to a notice of administrative penalty or an order to pay costs.
With the exception of a hearing regarding a notice of administrative penalty or a hearing regarding an Order to pay costs under section 122, a party to a hearing before the Environmental Review Tribunal may appeal to the Divisional Court on a question of law from the decision or order of the Environmental Review Tribunal in accordance with the rules of the Court.
With the exception of a hearing in relation to a notice of administrative penalty or a hearing in relation to an order to pay costs under section 122, a party to a hearing before the Environmental Review Tribunal may make a written appeal to the Minister from the Environmental Review Tribunal's decision on any matter other than a question of law if the appeal is made to the Minister 30 days after the party receives notice of the Environmental Review Tribunal's decision. The Minister may, if he or she deems it necessary for the purposes of this Act, confirm, vary or revoke the Environmental Review Tribunal's decision.
With the exception of a hearing in relation to a notice of administrative penalty or a hearing in relation to an order to pay costs under section 122, if there is an existing appeal to the Divisional Court by any party to the matter, a party to a hearing before the Environmental Review Tribunal may make a written appeal to the Minister from the Environmental Review Tribunal's decision on any matter other than a question of law within 30 days after the final disposition of the appeal. The Minister may, if he or she deems it necessary for the purposes of this Act, confirm, vary or revoke the Environmental Review Tribunal's decision.

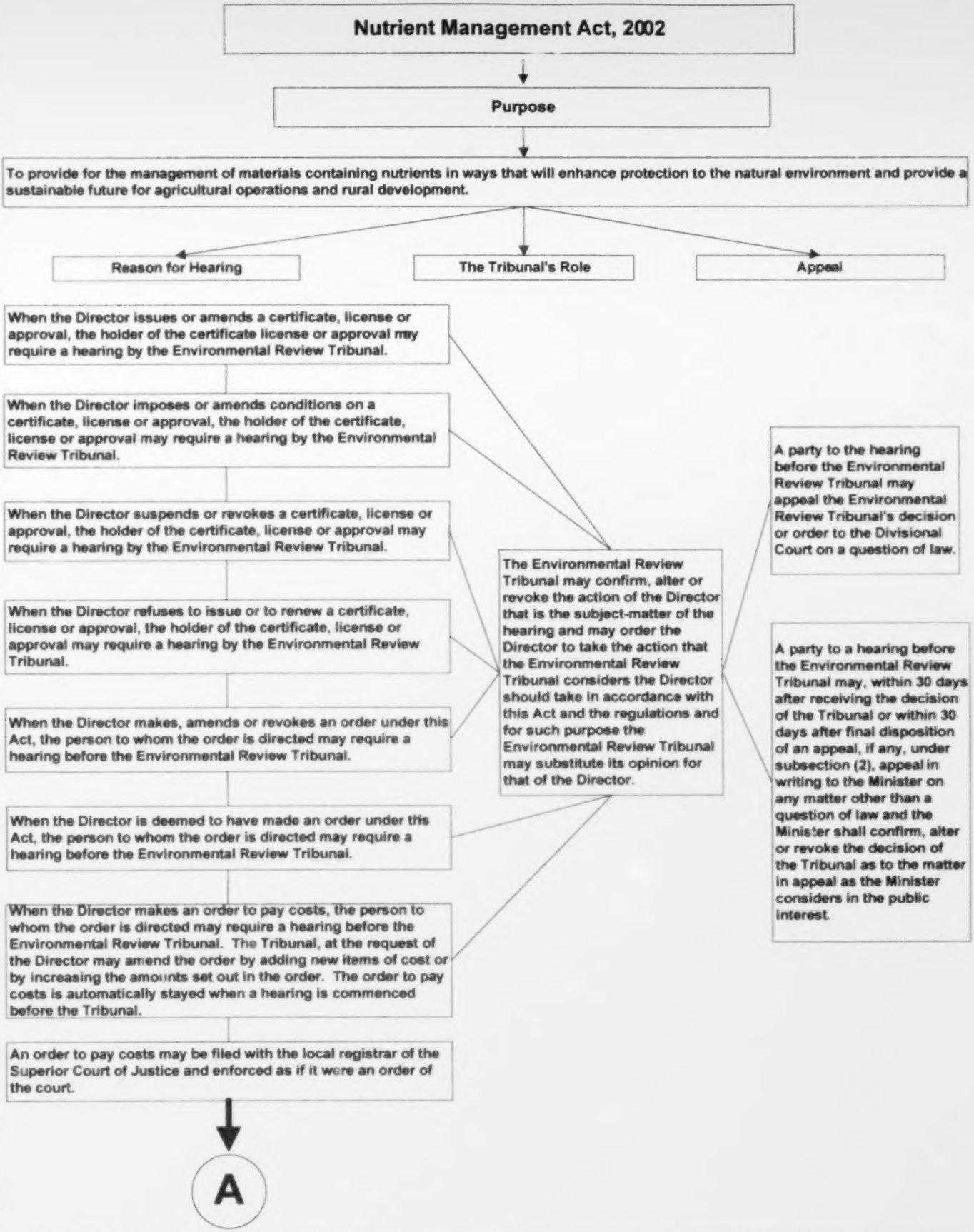
When the Director decides to issue an Order, including an Order to pay costs under section 122, the person to whom the Order is issued may require a hearing before the Environmental Review Tribunal provided that the person to whom the Order is issued did not request or consent to the Director's decision. There is an automatic stay of the order once a proceeding is commenced before the Tribunal.

When the Environmental Review Tribunal is conducting a hearing in relation to a decision of the Director to make an Order to pay costs, the Environmental Review Tribunal may only confirm, vary or revoke the decision. The Tribunal can, in certain circumstances, grant the Director's request to add new items of costs or to increase the amounts set out in the order.

An order to pay costs may be filed with the Superior Court of Justice and enforced as if it were an Order of the Court.

When the Director decides to issue a notice of administrative penalty under section 121, the recipient may requirea hearing before the Environmental Review Tribunal. (automatic stay).

When the Environmental Review Tribunal is conducting a hearing regarding a decision to issue a notice of administrative penalty, the Environmental Review Tribunal may confirm or revoke the decision or vary the decision, but not so as to vary the amount of the penalty unless it considers the amount to be unreasonable.


Nutrient Management Act, 2002
Purpose
To provide for the management of materials containing nutrients in ways that will enhance protection to the natural environment and provide a sustainable future for agricultural operations and rural development.
Reason for Hearing
The Tribunal's Role
Appeal
When the Director issues or amends a certificate, license or approval, the holder of the certificate license or approval may require a hearing by the Environmental Review Tribunal.
When the Director imposes or amends conditions on a certificate, license or approval, the holder of the certificate, license or approval may require a hearing by the Environmental Review Tribunal.
When the Director suspends or revokes a certificate, license or approval, the holder of the certificate, license or approval may require a hearing by the Environmental Review Tribunal.
When the Director refuses to issue or to renew a certificate, license or approval, the holder of the certificate, license or approval may require a hearing by the Environmental Review Tribunal.
When the Director makes, amends or revokes an order under this Act, the person to whom the order is directed may require a hearing before the Environmental Review Tribunal.
When the Director is deemed to have made an order under this Act, the person to whom the order is directed may require a hearing before the Environmental Review Tribunal.
When the Director makes an order to pay costs, the person to whom the order is directed may require a hearing before the Environmental Review Tribunal. The Tribunal, at the request of the Director may amend the order by adding new items of cost or by increasing the amounts set out in the order. The order to pay costs is automatically stayed when a hearing is commenced before the Tribunal.
An order to pay costs may be filed with the local registrar of the Superior Court of Justice and enforced as if it were an order of the court.
A
The Environmental Review Tribunal may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing and may order the Director to take the action that the Environmental Review Tribunal considers the Director should take in accordance with this Act and the regulations and for such purpose the Environmental Review Tribunal may substitute its opinion for that of the Director.
A party to the hearing before the Environmental Review Tribunal may appeal the Environmental Review Tribunal's decision or order to the Divisional Court on a question of law.
A party to a hearing before the Environmental Review Tribunal may, within 30 days after receiving the decision of the Tribunal or within 30 days after final disposition of an appeal, if any, under subsection (2), appeal in writing to the Minister on any matter other than a question of law and the Minister shall confirm, alter or revoke the decision of the Tribunal as to the matter in appeal as the Minister considers in the public interest.

Administrative Penalties:

When a Director is of the opinion that a person has contravened a provision of the Act or regulations, failed to comply with an Order under the Act (other than an Order to pay costs), or has failed to comply with a condition of a certificate, license or approval, the Director may issue a notice in writing requiring the person to pay an administrative penalty. The person to whom the order is directed, may require a hearing before the Environmental Review Tribunal.

The Environmental Review Tribunal may confirm, rescind or amend the notice according to what the Environmental Review Tribunal considers reasonable in the circumstances, but the Environmental Review Tribunal shall not vary the amount of the penalty unless it considers the amount to be unreasonable.

A party to a hearing before the Environmental Review Tribunal may, within 30 days after receiving the decision of the Tribunal or within 30 days after final disposition of an appeal, if any, under subsection (2), appeal in writing to the Minister on any matter other than a question of law and the Minister shall confirm, alter or revoke the decision of the Tribunal as to the matter in appeal as the Minister considers in the public interest.

Appendix B

Profile of Tribunal Members

Chair and Vice-Chairs

Ian McPhail, Q.C., Chair *(appointment expires December 17, 2004)*

- Chair, Environmental Review Tribunal (2001)
- Chair, Alcohol & Gaming Commission of Ontario (2000-2001)
- Director and Vice-Chair, Ontario Educational Communications Authority (TV Ontario) (1996-2000)
- Acting Chair, Ontario Educational Communications Authority (TV Ontario) (1999)
- Chair, Toronto Grace Hospital (1988-1995)
- Appointed federal Queen's Counsel (1992)
- Called to the Ontario Bar (1972)
- Private Law Practice in Toronto (1972-1999)
- Vice-President, Toronto Chinese Community Services Association, and the Sino-Canadian Arts Studies Inc.
- Member, Champlain Society, Empire Club of Canada, Cabbagetown South Association, and other community associations

Bill Balfour *(appointment expires May 5, 2004)*

- Appointed as a Vice-Chair in August 2001
- Appointed as a part-time member in 1999
- BASc in Civil Engineering and MBA from University of Toronto
- OLS (Ontario Land Surveyor) License; Certificate in Financial Planning from Sheridan College
- Principal, Gartner Lee Ltd, Environmental Consultants, (1989-2001)
- Supervisor, Recreational Lakes Program; District Manager for Muskoka, Haliburton and Parry Sound; Coordinator Regional Operations and Laboratories; Director, Approvals and Land Use Planning, Ontario Government (Ministries of Health and Environment), (1970-1989)
- Consulting Engineer with Marshall Macklin Monaghan from 1965 to 1970

Chris Braney *(appointment expires February 26, 2005)*

- Appointed as a Vice-Chair in February 2002
- Member, Ontario Rental Housing Tribunal (1999–2002)
- Director of Marketing for a Toronto-based aerospace company (1997-1999)
- President, West Hill Community Services (1998 – present)
- Vice-Chair, Scarborough Board of Education (1994-1997)
- President and owner of a health and safety products company specializing in hazardous cleanup projects (1990-1997)

- Vice-President, Centennial Community and Recreation Association (1992–1994)
- Director, Variety Club Telethon and Variety Club Tent 28 member (1994-present)
- City of Scarborough Archival and Records Committee (1995-1997); Budget and Woman's Issues Committees for the Scarborough Board of Education (1994 -1997)
- Studied Marketing Management at Centennial College
- Alternative Dispute Resolution, Faculty of Law, University of Windsor

Pauline Browes *(appointment expires January 3, 2005)*

- Appointed as a Vice-Chair in October 1995
- Member, Board of Directors, La Jeunesse Youth Orchestra, Northumberland Country (2001)
- Founder and Curator of the "Spirit of Canada" Art Gallery at Rice Lake, Ontario (1999)
- Bachelor of Arts (Political Science) from York University, Toronto and holds an Elementary Teaching Certificate from Toronto Teachers' College
- Member, Board of Governors, Scarborough Hospital (1994-1999)
- Member of Federal Parliament from 1984 to 1993; Cabinet Minister and Privy Councillor (1991-1993); Minister of Indian Affairs and Northern Development (1993); Minister of State – Employment and Immigration (1993); Minister of State – Environment (1991-1993)
- Commissioner and Appeal Commissioner, Residential Tenancy Commission, Government of Ontario (1981-1984)
- Chair and member of the Scarborough Board of Health (1981-1983)
- Committee member, Chiropractic Review Committee, Government of Ontario (1976-1981)

Norman A. Crawford *(appointment expires July 30, 2006)*

- Appointed as a Vice-Chair in July 2003
- Appointed as a member of the Ontario Municipal Board from August 2002 to July 2003
- A lawyer since 1972, he is a graduate of Osgoode Hall Law School and practised in both the public and the corporate and private sectors
- Prior to his appointment to the OMB, he carried on a general law practice in Kitchener

Knox M. Henry *(appointed "At Pleasure")*

- Appointed as a Vice-Chair in 1991
- Member, Environmental Appeal Board (1978-1991)
- Member, Pesticides Appeal Board (1975-1978)
- Cross-appointed as member of the Ontario Rental Housing Tribunal (1999-2003)
- Cross-appointed as a Deputy Mining and Lands Commissioner (1995-1997)
- Strong background as one of Canada's leading horticulturalists
- Guest lecturer on propagation, management and environmental issues at various universities and colleges

Donald R. Martyn *(appointment expires April 24, 2006)*

- Appointed as a Vice-Chair since April 2003
- Taught at the Toronto Board of Education, York University and University of Toronto
- Government of Ontario – Executive Officer to Premier Robarts and Executive Director for the Ministry of Community and Social Services
- Consultant to business, associations, and to all four levels of government – strategic planning and program value for expenditure
- Former Chair of the Georgina Committee of Adjustment and member of Planning Board
- Member of Lake Simcoe Conservation Authority
- Past Chair of the Royal Commonwealth Society
- Governor of Machachlan College, Oakville
- Master of Arts (University of Toronto)

Part-time Members

Jacquelyn Fraser *(appointment expired March 20, 2004)*

- Appointed as a member in 2001 and a resident of Norval, Ontario
- Environment and Resources Manager, Aggregate Producers' Association of Ontario (May 2000 – present)
- Project Manager, ESG International (May 1997 – May 2000)
- Sessional Instructor, Ontario Agricultural College, University of Guelph (September – December 1999)
- Master of Science (Land Resource Management and a Honours B.Sc. (Agr.)), University of Guelph

Gary A. Harron *(appointment expires March 11, 2006)*

- Appointed as a member in 2003 and a resident of Allenford, Ontario
- Graduated from the University of Guelph
- Owns and operates a 400 acre beef farm
- Member of the Ontario Municipal Board (1982 to present)
- Member of the Niagara Escarpment Commission (1973 to 1982)
- Several years municipal government experience as a member, Reeve and Warden
- Former executive in the insurance business
- Recipient of the Canadian Commemorative Medal on the 125th Anniversary of Confederation and the recipient of the Ontario Bicentennial Medal

Franco R. Mariotti *(appointed "At Pleasure")*

- Appointed as a member in 1987 and a resident of Whitefish, Ontario
- He has traveled widely in North and South America, Iceland, and the Galapagos
- A founder of the Sudbury Naturalists' Club; active in social and environmentally-concerned groups
- A Biologist/Staff Scientist at Science North and manager of its Biosphere Exhibit since 1981

George W. Ozburn *(appointed "At Pleasure")*

- Appointed as a member in 1975 and a resident of Thunder Bay, Ontario
- Bachelor of Science degree in Agriculture (McGill); spent a year studying at Imperial College of Science and Technology in London (UK) prior to receiving his Ph.D. (Entomology and Toxicology) from McGill University, and prior to joining the Faculty of Science at Lakehead University in Thunder Bay
- Worked in pesticide research for three years in West Africa followed by a university appointment in Michigan
- For many years was responsible for a major study of chronic and acute toxicity of many families of chlorinated organic compounds
- As Professor Emeritus, is now associated with a laboratory at Lakehead University which carries out regulatory and chronic toxicity testing for industry

David A. B. Pearson *(appointed "At Pleasure")*

- Appointed as a member in 1987 and a resident of Sudbury, Ontario
- Professor of Earth Sciences at Laurentian University
- Involved in research concerning lake water quality; leader of the Urban Lakes section of the Co-operative Fresh Water Ecology Unit at the university
- Took leave to be Project Director during the development of Science North 1980-1986, where he continues as Associate Director
- Past host of "Down to Earth" and "Understanding the Earth" TV series, and "Radio Lab" on CBC Northern Ontario Radio

Mary C. Schwass *(appointed "At Pleasure")*

- Appointed as a member in 1987 and a resident of Tara, Ontario
- President of Canadian International Consulting Economists Ltd., a firm specializing in developing long-term strategic planning, policies and priorities for private sector companies and governments throughout North America, Africa and Asia

Appendix C

Learning Program		
Date	**Topic**	**Presenters**
June 18, 2003	**Watershed Planning; Source Protection; and Water Budgets**	Mark V. Peacock, Watershed Services Co-ordinator, Ganaraska Region Conservation Authority Scott Duff, Senior Watershed Management Specialist, Standards Development Branch, Ministry of the Environment
September 8, 2003	**Tour of the Niagara Escarpment**	Mark Frawley, Ken Whitbread and Richard Murzin Niagara Escarpment Commission Keith Early, Superintendent Mono Cliffs Provincial Park
October 23, 2003	**Overview of the *Nutrient Management Act, 2002***	Dolly Goyette and Kevin Pal Waste Management Policy Branch and Mohsen Keyvani Environmental Assessment and Approvals Branch Ministry of the Environment Earl Pollock and Jacqui Forbes Nutrient Management Branch Ministry of Agriculture and Food Theresa McClenaghan Canadian Environmental Law Association David Armitage Ontario Federation of Agriculture
December 12, 2003	**In-house training session: Rules of Practice**	Mike Nicol Counsel, ERT
February 13, 2004	**In-house training session: Review of *Environmental Bill of Rights, 1993* legislation**	Mike Nicol Counsel, ERT

Appendix D

Key Performance Goals and Objectives For Next Fiscal Year 2004-2005

For more information on the Tribunal's performance goals and objectives refer to the Business Plan for 2004-2007.

1. Outreach
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2004-2005 Commitments
Commitment #1: Public information sessions will be used to promote public awareness and knowledge of the Tribunal's mandate and hearing process.	The Tribunal will conduct public information sessions prior to the commencement of its complex hearings.	Present public information sessions in cases of complex hearings or substantial public interest.	The Tribunal will conduct public information sessions prior to the commencement of complex hearings and hearings with substantial public interest.
Commitment #2: Website Access The Tribunal will use its website to communicate with the public.	The Tribunal will continue its review of its website to improve ease of access and the Tribunal will continue to track the number of visitors to the site to monitor its use.	Continued increase in the use and efficiency of the site.	The information contained on the website will be reviewed and improvements made to ensure ease of use for the public.

			The website will be updated each business day. Any amendments to the Rules of Practice, Practice Directions and Guidelines, or publication of the annual report will be posted as approved.
Commitment #3: Guides will be updated.	The Tribunal will review its guides in order to update the information to ensure accuracy and consistency.	Continued communication of the hearing process to the public.	To review and revise the guides as changes to governing legislation and policies arise.

2. Mediation
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2004-2005 Commitments
Commitment #4: Mediation Services Offer Mediation services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing.	When all parties agree to participate, mediation sessions will generally be held at least 30 days prior to the commencement of the hearing.	Increase the number of cases receiving mediation.	Continue to offer mediation services in every appeal and at the request of the parties in applications. Questionnaires will be sent to all parties at the completion of the mediation session to ascertain their level of satisfaction with the process and the Tribunal's involvement.

Appendix D

Key Performance Goals and Objectives For Next Fiscal Year 2004-2005

For more information on the Tribunal's performance goals and objectives refer to the Business Plan for 2004-2007.

1. Outreach Core Function:			
Goals/Outcomes	Measures	Targets/Standards	2004-2005 Commitments
Commitment #1: Public information sessions will be used to promote public awareness and knowledge of the Tribunal's mandate and hearing process.	The Tribunal will conduct public information sessions prior to the commencement of its complex hearings.	Present public information sessions in cases of complex hearings or substantial public interest.	The Tribunal will conduct public information sessions prior to the commencement of complex hearings and hearings with substantial public interest.
Commitment #2: Website Access The Tribunal will use its website to communicate with the public.	The Tribunal will continue its review of its website to improve ease of access and the Tribunal will continue to track the number of visitors to the site to monitor its use.	Continued increase in the use and efficiency of the site.	The information contained on the website will be reviewed and improvements made to ensure ease of use for the public.

			The website will be updated each business day. Any amendments to the Rules of Practice, Practice Directions and Guidelines, or publication of the annual report will be posted as approved.
Commitment #3: Guides will be updated.	The Tribunal will review its guides in order to update the information to ensure accuracy and consistency.	Continued communication of the hearing process to the public.	To review and revise the guides as changes to governing legislation and policies arise.

2. Mediation
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2004-2005 Commitments
Commitment #4: Mediation Services Offer Mediation services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing.	When all parties agree to participate, mediation sessions will generally be held at least 30 days prior to the commencement of the hearing.	Increase the number of cases receiving mediation.	Continue to offer mediation services in every appeal and at the request of the parties in applications. Questionnaires will be sent to all parties at the completion of the mediation session to ascertain their level of satisfaction with the process and the Tribunal's involvement.

			The Tribunal will monitor the success of mediation sessions by tracking the cases that are resolved prior to the hearing.

3. Staff Processing of Hearings
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2004-2005 Commitments
Commitment #5: Improve Timeliness in Scheduling Hearings	Hearings will be scheduled within the timeliness standard.	On average, hearing dates will be scheduled within 30 calendar days from the date of the receipt of the application/appeal and 7 calendar days from the date the Tribunal receives all necessary information/ documentation from the parties.	Staff will adhere to the target.

4. Hearings and
Core Function:

Goals/Outcomes	Measures	Targets/Standards	2004-2005 **Commitments**
Commitment #6: Tribunal Members will treat all participants in a hearing with courtesy and respect.	The Tribunal will survey hearing participants through Questionnaires at the completion of the hearing to monitor respect and courtesy. All complaints will be investigated in accordance with the Tribunal's Complaints Policy.	To provide Questionnaires that monitor respect and courtesy accorded to hearing participants by Tribunal members and investigate complaints in accordance with the Tribunal's Complaints Policy.	Results of hearing Questionnaires will be reported in the Tribunal's Annual Report. All complaints will be treated seriously and the Tribunal will comply with its Complaints Policy.
Commitment #7: Tribunal Members will render timely decisions.	The Tribunal will track the time it takes to render written decisions.	Decisions will be rendered within 30 days of final arguments, excepting hearings with legislated timelines and hearings under the *Consolidated Hearings Act*.	In 90% of all hearings held, Tribunal members will adhere to the target.
Commitment #8: Training of Members.	Members will receive adequate training to conduct hearings, write decisions and, in some cases, conduct mediation sessions.	Members will be trained in the conduct of hearings, knowledge of legislation and Tribunal rules, decision writing and alternative dispute resolution.	New members are trained to conduct hearings independently within one year of appointment. All members will receive ongoing training regarding the Tribunal's legislation, Rules of Practice and

			The Tribunal will monitor the success of mediation sessions by tracking the cases that are resolved prior to the hearing.

3. Staff Processing of Hearings Core Function:

Goals/Outcomes	Measures	Targets/Standards	2004-2005 Commitments
Commitment #5: Improve Timeliness in Scheduling Hearings	Hearings will be scheduled within the timeliness standard.	On average, hearing dates will be scheduled within 30 calendar days from the date of the receipt of the application/appeal and 7 calendar days from the date the Tribunal receives all necessary information/ documentation from the parties.	Staff will adhere to the target.

4. Hearings and Core Function:

Goals/Outcomes	Measures	Targets/Standards	2004-2005 **Commitments**
Commitment #6: Tribunal Members will treat all participants in a hearing with courtesy and respect.	The Tribunal will survey hearing participants through Questionnaires at the completion of the hearing to monitor respect and courtesy. All complaints will be investigated in accordance with the Tribunal's Complaints Policy.	To provide Questionnaires that monitor respect and courtesy accorded to hearing participants by Tribunal members and investigate complaints in accordance with the Tribunal's Complaints Policy.	Results of hearing Questionnaires will be reported in the Tribunal's Annual Report. All complaints will be treated seriously and the Tribunal will comply with its Complaints Policy.
Commitment #7: Tribunal Members will render timely decisions.	The Tribunal will track the time it takes to render written decisions.	Decisions will be rendered within 30 days of final arguments, excepting hearings with legislated timelines and hearings under the *Consolidated Hearings Act*.	In 90% of all hearings held, Tribunal members will adhere to the target.
Commitment #8: Training of Members.	Members will receive adequate training to conduct hearings, write decisions and, in some cases, conduct mediation sessions.	Members will be trained in the conduct of hearings, knowledge of legislation and Tribunal rules, decision writing and alternative dispute resolution.	New members are trained to conduct hearings independently within one year of appointment. All members will receive ongoing training regarding the Tribunal's legislation, Rules of Practice and

			administrative policies. The Tribunal will continue to conduct its learning program designed to enlighten members on environmental issues and administrative law.
Commitment #9: Appeals and judicial review of Tribunal Decisions.	The Tribunal will report the outcome of any appeal of its decisions or judicial review applications.	Review and analyze the outcome of any appeal of its decisions or judicial review applications.	The Tribunal will summarize any decision on appeal or judicial review in its Annual Report. The Tribunal will review practices in light of any decisions of appeal.

Appendix E

Website Statistics – Downloads

During the period April 1, 2003 to March 31, 2004

Most Popular Downloads – Entire ERT Website:

File Name	Downloads
Ontario Water Resources Act	1,812
Tribunal's Rules of Practice	1,632
Annual Report 2001-2002 (most current version publicly available)	1,455
City of Hamilton v. MOE (Decision released: May 13, 2003)	1,422
Poplar Grove Trailer Park Limited and Ontario Corporation No. 000376244 v. MOE (Decision released: April 18, 2003)	1,324
The Regional Municipality of Waterloo v. MOE (Decision released April 24, 2003)	1,306
The Corporation of the Town of North Perth v. MOE (Decision released: May 23, 2003)	1,260
Della Siega v. MOE (Decision released: May 13, 2003)	1,197
Echo Bay Milling Limited v. MOE (Decision released: April 9, 2003)	1,191
Durham District School Board v. MOE (Decision released: May 8, 2003)	1,116
Annual Report 1999-2000	1,101
The Regional Municipality of Niagara v. MOE (Notice of Withdrawal and Cancellation of Hearing, Case No. 02-233)	1,063
Anna Scott v. MOE (Decision released: June 13, 2003)	1,057
Tribunal's Guidelines	1,016
Nitrochem v. MOE (Notice of Withdrawal and Cancellation of Hearing, Case No. 02-234)	1,007

Appendix F

Financial Report
2003-2004

General Account for the Operation of the Tribunal:

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Salaries & Wages[1]	$ 972,000	$1,002,200	$1,030,557
Transportation and Communications	145,900	109,100	69,896
Services	433,800[2]	261,800	281,976
Supplies and Equipment	76,100	95,300	100,813
Total	$1,427,800	$1,468,400	$1,483,242

Additional Funds Allocated:
Large Waterworks and Regulation 459

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Transportation and Communications	$ 0	$ 5,800	$ 0
Services	$ 200,000	$ 7,400	$ 2,316
Total	$ 200,000	$ 13,200	$ 2,316

Safe Drinking Water Act

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Services	$ 0	$ 5,000	$ 0
Total	$ 0	$ 5,000	$ 0

1 Employee benefits are being managed centrally.

2 The Tribunal was allocated $200,000 for the Municipal Drinking Water Compliance however the Tribunal did not incur expenditures in this program.

Appendix G

Contact Information

For further information about this report or the Environmental Review Tribunal contact:

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